

OVERSIGHT OF SMALL AGENCIES

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL AND
CONTRACTING OVERSIGHT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

APRIL 10, 2014

Available via the World Wide Web: <http://www.fdsys.gov>

Printed for the use of the Committee on Homeland Security
and Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

89-526 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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THURSDAY, APRIL 10, 2014

U.S. SENATE,
SUBCOMMITTEE ON FINANCIAL AND CONTRACTING OVERSIGHT
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:53 a.m., in room 342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill and Johnson.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Good morning. I want to thank all of our witnesses for being here.

I apologize that a vote interfered with me getting here promptly at 10:30. I saw Senator Johnson going to vote just as I was leaving the chamber. So I am sure he will be here momentarily, and I will go ahead and begin with my opening statement.

This hearing will now come to order.

We are here today to discuss the oversight of small Federal agencies, commissions and other entities.

There are at least 41 different entities that currently do not receive oversight by an Inspector General (IG). Each of these agencies has a budget that sounds small when you compare it to the Federal Government's budget of \$3.5 trillion. But, if you add it all up—and we are talking about well over a billion dollars in budget authority every year that has virtually no oversight—\$1 billion is not small, even by Washington standards.

When there is no oversight and accountability, money gets wasted and mismanagement goes unaddressed. At the National Mediation Board (NMB), for example, the Government Accountability Office (GAO) recently cited a number of management challenges, many of which are the types of challenges generally identified and tracked by an Inspector General.

For example, NMB contracts have external auditors to review its annual financial statements, but the auditors are limited in scope only to the areas they are specifically hired to evaluate.

When GAO asked the NMB what sort of process they had in place for addressing the auditors' findings and recommendations, NMB officials said they had no formal process. Instead, they just assumed that any deficiencies cited by the auditors would get resolved sometime before the topic was reviewed again.

At the Federal Mediation and Conciliation Services (FMCS), which also has no statutory relationship with an IG, it took whistleblowers to uncover gross mismanagement. To their credit, the Federal Mediation and Conciliation Services did take these concerns to the Inspector General for the National Labor Relations Board (NLRB) and asked that office to investigate.

The NLRB IG generally substantiated claims that FMCS was abusing its purchase card account to pay for employees' home Internet service without proper controls and appeared to have paid holiday bonuses to its building's custodial employees with checks from the purchase card account, among other problems.

I think most of the folks at these agencies are hardworking people just trying to do their jobs. But, when there is no independent Inspector General asking any questions, problems can be missed or ignored. And, when there is no oversight, those problems have a tendency to fester and build and never get resolved.

Some small agencies actually do have IGs to oversee them, but a small agency is going to have an even smaller IG. Some IG offices are as small as one person, and that presents its own set of issues and problems.

For example, small IG offices may lack the resources necessary to conduct management and program oversight because of the number of required audits they have to conduct by law. IGs are required to conduct information security audits annually.

This is obviously a serious concern, and I do not want to minimize it. But the result of these required audits is that a small IG office, through no fault of its own, simply may not have the resources to provide adequate oversight of the agency's programs and expenditures.

Based on these concerns, I have begun to work on legislation to address the need for more efficient and effective oversight for small agencies. The Subcommittee has been working on a draft which was circulated to you before this hearing. I look forward to hearing your thoughts on these ideas.

I want to work through this process together. The goal here is strong oversight of every Federal dollar. And you are the experts, so I welcome your feedback.

The small agencies under discussion today may be small potatoes in the vast Federal Government. I doubt that anyone who is not in the rail or airline industry knows what the National Mediation Board does or how it differs from the National Labor Relations Board. I am sure that unless you are president of a unionized company or a union leader you do not know what the Federal Mediation and Conciliation Service is.

But I also believe that it is at these small agencies that effective oversight can make a huge difference. This is low-hanging fruit.

I thank the witnesses for being here. I really appreciate having the opportunity to convene a panel of professionals who represent a wide swath of government oversight. The witnesses here today represent a diverse spectrum of IG offices. And we will also hear from the GAO, which sets the gold standard for oversight through its own work and by developing the government auditing standards, known by us that have a lot of affection for the audit world as the Yellow Book.

I look forward to the witnesses' testimony and our discussion. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Madam Chairman. I appreciate your holding this hearing.

I, like you, have a great deal of respect for the type of information the Inspectors General provide to Congress, to give us the information to hopefully write good legislation, to make this government efficient. So I am just looking forward to the testimony from the witnesses. Thanks.

Senator MCCASKILL. Thank you, Senator Johnson.

Let me introduce the witnesses, and then we will proceed with testimony.

Peggy Gustafson is the Inspector General for the Small Business Administration (SBA) and the Chair of the Legislation Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). Prior to becoming Inspector General, Ms. Gustafson was my general counsel, where she wisely advised me on oversight issues and helped write legislation that has significantly strengthened the Offices of Inspectors General (OIG). From 1997 to 2007, Ms. Gustafson was my general counsel when I served as State Auditor of the State of Missouri.

Osvaldo Gratacos. Close?

Mr. GRATACOS. Close enough.

Senator MCCASKILL. Close enough. Is the Inspector General for the Export-Import Bank (EX-IM) of the United States. Prior to that, Mr. Gratacos served as Acting Inspector General and Deputy Inspector General and Counsel. Previously, Mr. Gratacos worked as a commercial counsel for Motorola with worldwide responsibilities for Federal transactions and also covered the Latin American region for commercial transactions.

Hubert Sparks is the Inspector General for the Appalachian Regional Commission (ARC). Mr. Sparks has 46 years of service in the Federal Government. He was the first Inspector General for the Appalachian Regional Commission and the Denali Commission and has also served at the Offices of Inspector General for the U.S. Department of Agriculture (USDA), the Veterans Administration (VA) and the Department of Homeland Security (DHS). Mr. Sparks previously served as Chair of the Small Inspectors General Group at the Council of Inspectors General for Integrity and Efficiency.

Michael Carroll is the Acting Inspector General for the U.S. Agency for International Development (USAID), and has served in that capacity since 2011. Prior to that, Mr. Carroll was Deputy Inspector General. Mr. Carroll has over 28 years of public service, and prior to his time at USAID, Mr. Carroll served as the Director of Administration for the Bureau of Industry and Security in the Department of Commerce.

Beryl Davis is the Director of Financial Management and Assurance team at the Government Accountability Office, where her responsibilities include audits related to improper payments, grants management, agencies' internal controls and Federal Inspector General issues. Ms. Davis also serves as the GAO's representative

in addressing standard-setting processes and activities of the International Organization of Supreme Audit Institutions (INTOSAI).

That is an awesome name, isn't it? Supreme Audit Institutions. Wow.

Before joining the Federal Government, Ms. Davis served as Vice President, Standards and Guidance for the Institute of Internal Auditors. She also served as Director of Audit Services and Management Support for the city of Orlando.

It is the custom of this Subcommittee to swear all witnesses. If you would not mind, I would ask you to stand.

Do you swear the testimony you are about to give before this Subcommittee will be the truth, the whole truth and nothing but the truth; so help you, God?

Ms. GUSTAFSON. I do.

Mr. GRATACOS. I do.

Mr. SPARKS. I do.

Mr. CARROLL. I do.

Ms. DAVIS. I do.

Senator McCASKILL. Thank you very much.

We will begin with Ms. Gustafson.

TESTIMONY OF THE HON. PEGGY E. GUSTAFSON,¹ INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION

Ms. GUSTAFSON. Good morning, Chairman McCaskill, Ranking Member Johnson. On behalf of the Chair of the Council of Inspectors General on Integrity and Efficiency, I am honored to represent the Federal Inspector General community this morning in my capacity as Chair of CIGIE's Legislation Committee.

Let me begin by again thanking this Subcommittee for your continuing support of our mission and your interest in our work.

As you know, CIGIE serves a leadership role and is the core of the IG community. Together, the work of the IG community results in significant improvements to the economy and efficiency of programs governmentwide, with potential savings totaling approximately \$46.3 billion in one fiscal year (FY). With the IG community's aggregate fiscal year 2012 budget of approximately \$2.7 billion, these potential savings represented about a \$17 return on every dollar invested in Offices of Inspector General.

The IG Reform Act established CIGIE in 2008 to serve as its unified council of statutory Federal IGs to carry out 2 specific missions—to address the economy, integrity and effectiveness issues that transcend individual government agencies and to increase the professionalism and effectiveness of personnel by developing policies, standards and approaches to aid in the establishment of a well-trained and highly skilled workforce in Offices of Inspector General.

Over the past several years, the IG community has identified and addressed a number of issues that transcend individual agencies. Among CIGIE's reports, we have addressed topics such as cybersecurity, suspension and debarment, the use of new media, IG hotline operations, whistleblower protections and Inspector General

¹The prepared statement of Ms. Gustafson appears in the Appendix on page 27.

oversight of the American Recovery and Reinvestment Act of 2009. These reports and others are publicly available on CIGIE's website.

Our training and professional development mission is addressed through our training institute. The institute is still in the developmental phase, but in fiscal year 2012 the institute delivered specialized training courses to 1,677 students, which was a 17 percent increase in students from the previous year.

CIGIE does recognize that not every agency experiences independent oversight by an Inspector General and Offices of Inspector General vary in their available resources and law enforcement powers necessary to conduct effective oversight.

In the past, CIGIE has played a role in facilitating requests for assistance to ensure effective agency oversight by an Office of Inspector General.

Where IGs lack law enforcement powers, CIGIE has served as a quick and efficient means to communicate requests for such support from other members of the community.

CIGIE has also been called upon for ad hoc requests such as assistance by its members to ensure effective oversight of the agencies under the particular OIG's jurisdiction.

CIGIE will continue to provide this facilitation role and support requests to promote the efficiency and effective oversight.

I want to just briefly mention that we are also grateful for the introduction of Senate Bill S. 1953, the Oversight Workforce Improvement Act, by Chairman Tester and Senator McCaskill and the support of that bill by its co-sponsor. This bill does recognize certain challenges faced by the IG community and addresses most concerns offered by CIGIE in its March 19, 2013 letter to the Office of Management and Budget (OMB), which outlines our current legislative initiatives.

In addition to the legislative changes championed by S. 1953, CIGIE continues to feel strongly that IGs should be exempted from the Computer Matching and Privacy Protection Act relative to using electronic means to identify those who improperly receive Federal assistance. And, as always, I am here to answer any questions about that, but I definitely wanted to mention that while I was here.

I am grateful that IGs across the government have a voice through CIGIE and have access to training and other resources that did not exist prior to the IG Reform Act. We also have an unprecedented degree of transparency in our annual budget request, which helps assure independence.

This does conclude my verbal testimony.

Again, I want to thank you for inviting me here this morning, and I will be pleased to answer any questions you may have.

Senator McCASKILL. Thank you. Mr. Gratacos.

TESTIMONY OF THE HON. OSVALDO L. GRATACOS,¹ INSPECTOR GENERAL, EXPORT-IMPORT BANK OF THE UNITED STATES

Mr. GRATACOS. Good morning, Madam Chairman, Ranking Member Johnson and other Members of this Subcommittee.¹

Thank you for the invitation and opportunity to testify before you today about the oversight of small Federal agencies, specifically about my experience as the Inspector General of the Export-Import Bank.

On Tuesday, I had an opportunity to read the draft bill circulated to us on Monday afternoon. The proposed draft bill could disrupt the operation of some of the established small IGs that have already found solutions to some of the challenges I discuss in my written testimony.

There are a number of ways to strengthen small IGs, and that is the discussion my testimony is intended to accomplish.

During my short testimony today, I would like to summarize Ex-Im Bank's mission, present a short history of Ex-Im Bank's OIG since we are one of the newest OIGs—Presidentially appointed OIGs—and discuss some of the challenges my office has faced since its inception. Before I continue, I would like to thank the Almighty for the opportunity, my family and the members of the OIG staff for their hard work.

Ex-Im Bank—for some of you who do not know, Ex-Im Bank is the official export credit agency (ECA) of the United States. It supports the financing of U.S. goods and services in international markets, turning export opportunities into actual sales that help U.S. companies of all sizes create and maintain jobs in the United States. Ex-Im Bank has programs to address short, medium and long-term needs of exporters, assuming the credit and country risks the private sector is unable or unwilling to accept.

In fiscal years, 2012 and 2013, Ex-Im Bank approved over \$60 billion in export transactions combined. Ex-Im Bank's portfolio has increased by 94 percent since 2008, which is when the OIG was created. So the exposure increased from \$58 billion to \$113 billion as of the end of last year. In the current charter, Ex-Im Bank has authority to approve up to \$140 billion in export transactions.

Ex-Im Bank OIG was created in 2002, but the Inspector General did not officially take office until August 2007. The OIG has achieved noticeable success in performing its statutory duties. Specifically, since fiscal year 2009, we have issued over 40 audits, inspections and special reports containing 170 findings, recommendations and suggestions for improving Ex-Im Bank programs and operations. Our law enforcement has resulted in a number of actions, including over 70 indictments and information, 45 convictions, 40 guilty pleas entered in court, over 400 management referrals for enhanced diligence actions and approximately \$300 million in court-imposed restitution, forfeitures or repayments to the bank. All of this has been accomplished with a very modest budget, starting at approximately \$1 million and gradually increasing, or rising, to about \$5 million for this current fiscal year.

¹ The prepared statement of Mr. Gratacos appears in the Appendix on page 35.

But, as a small IG, my experience offers some highlights of some of the challenges that we face when we are establishing a new office or we are running a small office. Because of limited resources, I often rely on the agency to provide essential support functions, like information technology (IT), personnel management and financial management.

As a small IG, I can name some of the challenges that we face—access to information, adequate office space, which is one of the challenges we had at Ex-Im Bank, and human resources support, for example.

Despite these challenges, in my opinion, we have provided effective oversight of Ex-Im Bank, as our numbers show.

Madam Chairman, Ranking Member Johnson and Members of this Committee, thank you once again for the opportunity to testify before you today. I will be pleased to respond to any questions you may have. Thank you.

Senator McCASKILL. Thank you. Mr. Sparks.

**TESTIMONY OF HUBERT SPARKS,¹ INSPECTOR GENERAL,
APPALACHIAN REGIONAL COMMISSION**

Mr. SPARKS. Good morning, Chair McCaskill and Ranking Member Johnson.¹

I welcome the opportunity to discuss OIG oversight of small agencies. My comments are based on 44 of my 47 years being in the OIG community, including 29 years at major IGs and 15 years at IGs in small agencies.

I guess I am representing the very smallest OIGs.

I strongly believe that independent oversight of Federal spending and program operations is sound policy. Although OIGs generate very impressive statistics, including large potential benefits, one, if not the primary, benefit of an OIG presence is the preventive and deterrent value of such offices regardless of the size of the IG office.

My written statement emphasized the optional structures providing an OIG presence in entities that currently do not have independent OIG oversight. These options included:

Small agencies contracting with OIGs for services. I am not a fan of that because of some of the challenges that Chairman McCaskill mentioned about getting full authorities for these contracts.

A permanent IG presence. I do not believe a permanent IG presence is necessary at some of the very small entities that were in the discussion draft for having an IG presence. There may be a few of those that deserve a full-time independent IG.

The primary options that I would recommend are legislative oversight provided by another IG office, and this could be either from a large IG office or one of the smaller IG offices, depending on the size of the entity for which oversight is requested.

Another option which I supported for my agency is establishing OIG responsibilities for oversight of several of the smaller entities for which independent oversight is proposed.

I would be glad to discuss these options.

I appreciate the efforts of the Committee on this important issue.

¹The prepared statement of Mr. Sparks appears in the Appendix on page 40.

At the time of my written statement, I did not realize the proposal would include the elimination of nine Designated Federal Entities' (DFE) smaller IGs. Thus, I would like to take a minute to comment on this aspect of the proposal.

Although I will be completing my final retirement shortly and thus have no direct horse in this race, so to speak, I have concerns with the elimination of the noted DFE OIGs.

Recognizing Chairman McCaskill's comments about the challenges that smaller IGs face, I also believe that elimination would substantially reduce the level of oversight provided to their respective agencies, and this might be somewhat contrary to the overall objective of providing oversight to all Federal funds.

Expertise gained over many years and the experience of running a smaller IG and dealing with the challenges and dealing independently with agency heads and senior officials on a regular basis would be reduced.

I do not know the criteria for reaching elimination conclusions, but I do not believe such issues as just the size of our current staff should be primary factor. I think it should be how much we are benefiting and what value we provide to the agencies we now oversight.

Also, the cost of service provided by another IG would probably at least equal current OIG costs if the level of oversight is to be maintained. However, the very important element of onsite presence would be significantly reduced.

Other practical matters involve the staffing of oversight of smaller agencies by the acquiring OIG and the larger IG's interest or enthusiasm with respect to providing such services, considering the high-risk programs that large IGs have to oversight.

I also believe established smaller IGs can provide necessary oversight to smaller entities without such oversight and could concentrate more directly on this responsibility than large IGs who, admittedly, have far higher priorities.

I was somewhat surprised the employee rights section of the discussion draft provides that newly assigned IGs will determine whether staff of the transferred IG will be employed. This basically results in smaller IGs, most of whom are long-term career employees who earned their positions through demonstrated performance, not only having their organizations abolished but also being subject to termination if the acquiring IG does not pick them up.

I would suggest that the legislation, if it goes forward, clearly transfer the staff of the smaller IGs to the acquiring IG and those staff would be part of the normal evaluation process and assessed on how their performance is rather than kind of having to wait in limbo to see for a year if they are going to be picked up by the major IG.

I would hope also that the legislation should consider eliminating for now the elimination of the small DFE OIGs. I think it is a good subject for discussion, but I think there should be more discussion with the smaller IGs and with GAO, who supported establishment in the first place.

And, if the proposal goes forward, I would recommend that it not include at the present time elimination of the Designated Federal

Entities until we could have more discussion of a very important subject.

One of the things that I did agree with—and I appreciate that it is in the proposed draft—is I and the former IG at the Appalachian Regional Commission have regularly commented that consolidation of seven small economic development commissions, most of whom are supposed to have a legislated IG, be consolidated into one IG office.

These commissions are very unique joint State/Federal partnerships paid for partially by State funds, partially by Federal funds. Currently, there is only one IG presence in all seven, and that is me at the Appalachian Regional Commission.

And I do believe that kind of a consolidation would be very valuable. I do not mean this to be supportive of other consolidations for which my knowledge is limited.

Thank you very much. I would be glad to answer any questions. Senator McCASKILL. Thank you, Mr. Sparks. Mr. Carroll.

TESTIMONY OF MICHAEL G. CARROLL,¹ ACTING INSPECTOR GENERAL, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. CARROLL. Chairman McCaskill, Ranking Member Johnson, I appreciate the opportunity to appear before the Committee today to discuss and share my experiences and the experiences of the USAID OIG in providing oversight for five Federal agencies, ranging in size from \$24 billion to \$22 million.

And I look forward to the opportunity to work with you and your staff. I have a vested interest in this legislation, and I really look forward to working with you to move this legislation forward.

I think that, at least in my opinion, the consolidated model that you are considering here is clearly an effective model for providing oversight of small agencies. You get economies of scale. You get functional depth. And you get a critical mass of oversight that really allows for effective oversight of smaller agencies.

Now the consolidated model works for us particularly because we have sort of organizational alignment, if you will, with the agencies in our portfolio. All of the five agencies that we are responsible for are foreign affairs/foreign assistance agencies that deliver their oversight in developing countries, and the organizational depth that we have to oversee that is substantial over the years.

We are a Foreign Service organization, as you know, and we have the technical expertise and the structural infrastructure in place to support oversight, whether it is a billion dollar AID program in Afghanistan, whether it is a \$500 million program for the Millennium Challenge Corporation (MCC) in Africa or whether it is a \$10,000 the Inter-American Foundation (IAF) grant in Latin America. So, regardless of the agency, the modality or the scale, we have the technical expertise to oversee those programs.

The other thing that consolidation brings—and I will refer to IG Gratacos's written testimony—is economies of scale with administrative services. I think we would all agree that effective oversight is independent oversight. And it is difficult, I realize, for the small

¹ The prepared statement of Mr. Carroll appears in the Appendix on page 45.

IGs getting their administrative services from their agencies to be as independent as they would like to be.

At the AID IG, we maintain and operate our own administrative services separate from the agency. There is a cost incurred there, but I think it is money well spent. And it allows us to very effectively and equitably distribute our administrative overhead across the five agencies that we are responsible for.

I think the other benefit that consolidation gives you when you have alignment with the businesses of your organizations—and we have talked about this before in a special IG context—is strategic, or cross-cutting, oversight of whatever the line of business is.

For us, it is foreign assistance. So we have oversight currently of the five primary foreign assistance agencies in the U.S. Government, and that gives us the ability and the sort of strategic look at that sector and provide oversight if, in fact, there was a need to do that.

I would like to, if I could, just identify one challenge that we have had in overseeing five Federal agencies that I do not think right now, the way I have seen the draft legislation, is as good as it could be. Certainly, this is great legislation, but there is one particular issue I would like to bring up.

Our construct is we were created in 1980 based on the IG Act. So it is very clear what our authorities are as it relates to the OIG as it relates to AID.

The other four agencies—the Overseas Private Investment Corporation (OPIC), the Inter-American Foundation, U.S. African Development Foundation and MCC—our authorities there come from a wide array of legislation over time that is not, in my opinion, as effective as the IG Act.

So, for example, 6 months into the fiscal year of 2014, we are still negotiating with OPIC on an oversight package.

And, while this is not the case anymore under Daniel Yohannes, but prior to his leadership at MCC, we had historically a very difficult relationship with them because, as we were trying to apply the authorities that we had and the responsibilities that we had to oversee their programs, they did not see the nexus or the authority. In fact, I had a conversation at one point with the Deputy Chief Executive Officer (CEO) of MCC, when we were trying to implement a particular requirement that we had, and he said that is your problem, not mine.

So I do not think that the Committee wants to see any of the IGs in a position where we are negotiating our authorities.

So I think, ideally—and this may be difficult, but ideally, what I would love to see is when you implement this implementation, that the authorities for all of these entities, even the ones currently under my authority, are all captured in the IG Act.

That would have the added benefit of creating a nexus to this Committee that might not exist right now for those other four agencies. It certainly does with AID, where we have oversight over the IG function. But by virtue of the fact that those four agencies are not captured in the IG Act, it creates uncertainty, if you will, not that you could not exert your authority if you wanted to.

So that is the one real critical piece of feedback I would like to give the Committee.

And then, as several people at the table have stated, it is a challenge to stay focused on the small organizations when you have large organizations that you are overseeing. You have Senator McCaskill, with Senator Coburn, wanting to know what is going on in Afghanistan or Iraq, and you have still got to worry about that \$10,000 grant that IAF is issuing in Latin America.

So it is not impossible, and it is certainly doable, but it is just the IGs really have to stay focused on their entire portfolio. And I would submit that at five agencies I am about the edge of the span of control that you would want for an IG.

And I appreciate the fact that in the legislation that the Ex-Im Bank IG could pick up OPIC, and I think that makes sense from a line of business point of view, that it much more aligns with his operation than it does with mine.

So I appreciate the opportunity to appear here, and I am happy to answer any questions that the Committee might have.

Senator McCASKILL. Thank you. Ms. Davis.

TESTIMONY OF BERYL H. DAVIS,¹ DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. DAVIS. Chair McCaskill, Ranking Member Johnson, thank you for the opportunity to be here today to discuss oversight of the small Federal agencies.

My testimony will focus on the creation of independent inspector general offices, IG oversight of small agencies, and IG independence and budgetary resources.

The Inspector General Act of 1978 established IG offices with IGs appointed by the President and confirmed by the Senate in 12 major departments and agencies of the government. Their responsibilities include conducting and supervising audits and investigations, recommending policies to promote economy, efficiency and effectiveness, and preventing and detecting fraud and abuse in programs and operations.

Since then, additional IGs have been added through a series of amendments to the Act. The 1988 amendments established IGs in Designated Federal Entities, also known as DFEs, with responsibilities similar to those of IGs appointed by the President.

However, there is a clear distinction. They are appointed and removed by their agency heads rather than by the President and are not confirmed by the Senate.

GAO has long supported the creation of independent IG offices in appropriate Federal departments, agencies and entities. In 2001, when asked to review the need for an IG at the Export-Import Bank, we presented just one option, establishing a new IG office with an IG appointed by either the President or by the Export-Import Bank chairman.

We have also recommended that certain small agencies could benefit by obtaining IG oversight from another agency's IG office where the missions of the two agencies are somewhat similar. In 2008, we reported on the responsiveness of the Chemical Safety Hazard Investigation Board (CSB) to past IG recommendations.

¹ The prepared statement of Ms. Davis appears in the Appendix on page 50.

The Environmental Protection Agency (EPA) IG had been providing oversight to the CSB since 2004 through a temporary mandate.

Our review disclosed that the CSB was not investigating all accidental chemical releases that involved a fatality, serious injury or substantial property damage. As a result, we proposed alternative oversight mechanisms to give the EPA IG permanent oversight authority.

In a recent example, our review of the programs and management practices of the National Mediation Board concluded in a 2013 report that this small agency with a vital role in facilitating labor relations in the Nation's railroads and airlines lacked certain internal controls that could help achieve results and minimize operational problems. We recommended that an existing Federal agency's IG office provide independent audit and investigative oversight.

Independence is the cornerstone of professional auditing and one of the most important elements of an effective IG function. The IG Act provides protections to IG independence that are necessary in large part because of the unusual reporting relationships of the IGs who are subject to the general supervision of their agency heads while, at the same time, reporting externally to the Congress.

The IG Act provides the IGs with independence by authorizing them to select and employ their own staffs and make such investigations and reports as they deem necessary.

The IG Reform Act of 2008 further enhanced IG independence and accountability by specifying the levels of basic pay for IGs and requiring IGs to obtain legal advice independent of their agencies.

It also provides a process for handling allegations of wrongdoing by IGs so that such reviews are not done by the management officials or subject to IG oversight. The Act requires both the President and the DFE heads to give Congress notice at least 30 days before removing an IG.

In addition, the Reform Act helps ensure IG independence through adequate funding by requiring the IG budget requests be separately identified in the President's budget submission to Congress.

The Dodd-Frank Act of 2010 amended the IG Act with provisions to enhance the independence of IGs in DFEs, who may now report to the entire board or commission rather than an individual chairman. A two-thirds majority of the board or commission is required to remove the IG.

With the growing complexity of the Federal Government and the fiscal constraints under which it operates, it is important that an independent, objective and reliable IG structure be in place where appropriate to ensure adequate audit and investigative coverage. IG offices play a key role in Federal agency oversight by enhancing government accountability and protecting the Nation's resources.

There are different alternatives for IG oversight. The determination of where and how to provide IG oversight in specific agencies is a policy decision best addressed by the Congress.

This concludes my prepared statement, Chairman McCaskill and Ranking Member Johnson. I would be pleased to answer any questions you may have.

Senator McCASKILL. Thank you all.

We have an awful lot of expertise at this table, and I am going to try to let you all guide this discussion as much as possible so we can pick your brain on the right way to get this fixed.

Is it inaccurate for me to say that right now for 41 different agencies or commissions the only time they get independent oversight is if they ask for it? Does anybody disagree with that statement?

[Witnesses shaking heads negatively.]

So that is a problem because I have not noticed in this business that your phone rings off the hook for people calling and saying, please come look at us; please come see us.

And also, am I correct in saying if, in fact, for some reason they do call they get to pick and choose what you look at? Is that correct?

Mr. CARROLL. That is correct.

Senator McCASKILL. So not only is it up to them to decide if they want someone to take a look; it is also up to them as to what you get to look at.

And I would like you, Mr. Carroll, to speak a little bit about your experience with negotiating with OPIC. Are you negotiating over cost because there is not a budget line, or are you negotiating over scope?

Mr. CARROLL. Scope. If you look back at the history of our relationship with OPIC—and I am not going to question the wisdom of Congress, but over time, in the Foreign Assistance Act, our authorities have eroded. That was a conscious decision that the Congress made to sort of weaken our authorities, if you will.

Senator McCASKILL. I wonder why. Do you know?

Mr. CARROLL. I know the history. For example, at some points, OPIC was given responsibility for conducting their own financial statement audit, and I would not agree with that. I would never agree with that, and I do not think you would either.

And one of the fixes that I have seen in the draft legislation is our authority is “may” and the new authority is “shall.” And I think that is very important. That might seem like a nuance, but it is clear in the material.

And literally, at this point, we do not have the authority to do audits; that is clear. We have the authority to conduct investigations and reviews.

So now we are in negotiation with them, 6 months into the fiscal year, trying to do a risk assessment, for example, and they will not sign the memorandum of understanding (MOU) with the risk assessment in it because they are stating that there will be an OPIC IG in 2015 based on the Power Africa Act. And they are waiting on that, and they think that this would be a waste of money and be duplicative.

It is an untenable situation.

Senator McCASKILL. They are waiting for legislation from Congress?

Mr. CARROLL. Yes. Right. There is legislation in the House, if I am not mistaken. It is called the Power Africa Act.

Senator McCASKILL. You need to please explain to them that they may be “Waiting for Godot.”

Mr. CARROLL. Right. So there needs to be communication here within the Congress.

So it is untenable.

Here we are, and you know, they have been successful. It has been a Fabian kind of defense, and they are not negotiating in good faith, but it has been a very difficult, contentious negotiation.

Senator MCCASKILL. Let me also talk a little bit about IG independence. It has always seemed weird to me, as I began learning about IGs when I came to Washington, that we have some IGs that are Presidentially appointed and we have other IGs that the agency hires.

Well, that is weird. I do not know how independent you can be if you are subject to the complete control of the head of the agency and if you owe your job to the head of the agency and you owe how you—I mean, I get that you cannot get removed as easily as maybe other employees.

But, wouldn't there be value—I would love each of you to speak briefly to this, and then I will turn it over to Senator Johnson for some questions.

Wouldn't it be better if—I know we have difficulty getting IGs confirmed. No matter what party is in charge and what party has majority, confirmations are always a difficult process, and we have too many people we have to confirm.

But this is an area for independent oversight. It just never has made sense to me that you would have an IG that is actually hired by the person that they are supposed to be overseeing, and I would like each of you to speak to that if you are comfortable in doing so.

Mr. SPARKS. As one of those Designated Federal Entity IGs, I think in my statement I did not push for Presidential for each of us and did not support such. I think it has merits in some sense.

My experience is it has not really affected how talking to my fellow smaller IGs—we have operated.

The IG Act has such powerful authorities. Very few bureaucrats have authorities to look at anything you want and have access to all your records and have subpoena authorities and to issue public reports. And, if they are interfered with by the agency head, we have the right to come to you folks and say we have been interfered with. So, on a practical basis, I think, the current process, has worked well.

Prestige-wise, I think it probably adds a little power, and input—when you are dealing with the agency head.

The negative part—and I brought this up at our smaller IG group meeting last week, and most did not see a real need. They would certainly accept it, and they certainly see it has some benefits, but they were somewhat concerned that when you went to a Presidential IG the chances of an experienced OIG employee that has come through the ranks to get to be the IG at a small agency might be reduced because there would be a different vacancy—number of candidates and what you mentioned, the time of getting confirmed.

But I think basically we have dealt with that. I think it would probably be—if you talked to a lot of the smaller IGs, they might say yes, it would probably add a little bit to us.

I have been there for 15 years, at ARC, and the Denali Commission for its first 3 years. I did not see that they challenged us too much on our authority.

I always make the statement that we all audit our supervisors. If you are the IG at the Defense Department (DOD), appointed by the President, on a day-to-day basis, you are auditing your supervisors because any program you audit goes through the Secretary of Defense. So you are auditing your supervisors just like I audit my supervisors.

But we have lots of authority. I think only administrative law judges with lifetime appointments have more authorities than IGs, and we have to use those authorities judiciously.

So I have not pushed for that. Let me just stop there.

Senator MCCASKILL. I understand the arguments you made. I think they are cogent and make sense on both sides of the equation.

I have not noticed IGs—in fact, I have been involved in trying to help find IGs for vacant agencies, and the pool has generally respected people in the Federal IG community.

I have not noticed this President or, frankly, President Bush—I think the fear might be for people who are not close to this system, that all of a sudden this would become some kind of political appointment as opposed to a professional appointment.

But I think that at least the two Presidents that I have worked with since I came to Washington; both of those Presidents, I think, have pretty much just tapped the pool of good IGs that are out in the community that either get moved from a smaller agency to a bigger agency or get moved from an assistant IG to the IG as opposed to outsiders coming in.

Mr. SPARKS. Chairman, I totally agree with that, and that is the way it goes.

And I mentioned to your counsel, Sarah, a couple of weeks ago, as an aside, that if you made the Appalachian Regional Commission IG a Presidential appointment and I could get it, I would extend my life for 6 months and stay there.

Senator MCCASKILL. There you go.

Ms. GUSTAFSON. If I can just comment just quickly, first off, I was not in that pool, and I am an IG, and I think I would do OK. So it is not always a thing from within the IG pool.

But I do want to say, having been on the outside——

Senator MCCASKILL. Let me rush to say that your appointment, though, was based on merit for your many years of service in the audit community.

Ms. GUSTAFSON. Well, there is no question.

Senator MCCASKILL. I do not want anybody to think that you were not highly qualified for the position.

Ms. GUSTAFSON. No, 8 years in an auditor's office.

And, actually, there have been a couple of IGs that I can think of off the top of my head. DHS has a new IG who, I believe, is from outside the community as is Michael Horowitz who is from the Department of Justice (DOJ), who is the DOJ IG, who came from outside the community.

So I certainly think that there are certainly strong professionals being nominated who are being named IGs as well that have not had that much experience with the IG community before then.

But having been on the outside and not on the inside, I understand your thoughts on Presidential versus DFE.

And now that I am an IG I have to say it really is—I have come to really appreciate the strength of the IG Act is. I mean, IGs are given a great deal of independence through that Act, whether you are a DFE or whether you are a Presidential appointee.

I am asked this question often. I have been asked this question before, about whether there is a level of independence. And I think Mr. Sparks makes a lot of good points, but in the end, as I think you appreciate, it depends on who the IG is.

I mean, I think you can be an IG who is a Presidential appointee and allow yourself to get pushed around. Or, you could be a DFE and completely stand up. So, in the end, it really is about the quality of the person; it is really the most crucial part.

Even understanding, I think, Mr. Sparks makes some really good points, but, yes, I think it is a very strong community with—it is a very powerful tool. The IG Act is a very powerful tool that you can use to exert a lot of independence, and I think that we use that.

Senator McCASKILL. Great. OK, Senator Johnson.

Senator JOHNSON. Thank you, Madam Chairman.

Interesting hearing. As I go through my questions, first of all, whoever feels most qualified to answer just chime in because I am not quite sure who I should really be asking these things of.

I am coming at this from the perspective of a private sector guy who has gone through a lot of financial statement audits as well as the International Organization for Standardization (ISO) quality systems surveillance audits.

A lot of the issues we are discussing here are the same issues involved in the private sector in terms of an independent auditor that if he just comes into a business or an agency cold has a lot to learn and can also miss a lot because they are not knowledgeable versus somebody who has been with an agency or a company, an auditor long-term that really knows the business and can spot things more quickly but has the potential then, whether it is called auditor capture or inspector general capture, to really lose some independence. I think that is really the difficult issue we are talking about here.

Let me start out by asking, within the agencies, what is automatic in terms of inspections or audits every year?

Mr. CARROLL. Well, there are a number of audits that are required by law. The ones that come to mind are the financial statement audit, the Federal Information Security Management Act (FISMA) audit, and there are some other audits that we have to do—the Improper Payment Elimination and Recovery Acts (IPERA) for improper payments, those sorts of things.

Senator JOHNSON. Which of those are contracted with an outside auditing firm—

Mr. CARROLL. OK.

Senator JOHNSON [continuing]. Versus done by the Inspector General's office?

Mr. CARROLL. Right. So I think—well, I will only answer for myself, and I think it has to do with scale, and there is a philosophy.

For example, we do the financial statement audit of USAID in-house.

We contract it out for the other four organizations because they are smaller organizations and they sort of—well, the two corporations and the two foundations have more of a corporate structure that you are familiar with. So we use outside audit firms that we supervise.

But with AID, since we are the indigenous IG, we do that work ourselves. Where we need technical expertise, for FISMA, for example, we will contract that out, to do penetration testing and that thing—and that sort of thing. But, again, we supervise that ourselves.

But, generally, we prefer to do all of the audit work ourselves in-house.

Senator JOHNSON. So what is the tradeoff, and how do you guard against that tradeoff in terms of being familiar with the agency, familiar with what part you are auditing, versus really being independent?

I know you have auditing standards and that type of thing. But, in terms of just the basic reality of the situation, that is a really difficult problem, isn't it, and how do you deal with that?

Mr. CARROLL. Well, maybe I am misunderstanding your question, Senator, but I think by virtue of the fact that the statutory IG or the federally Designated IG is the one doing the work there is no question of independence there. We understand the systems. We understand the vulnerabilities. We understand the business model. And I think that is a benefit rather than a disadvantage.

And I would say, in the corporate world, the for-profit audit industry is exactly that—for profit.

And I would say we are more independent than for-profit audit organizations on the outside that are looking for the work the next year.

Now I am not saying that they would do anything different than we would do, but we are completely independent, and I think that is a strength rather than a weakness.

Senator JOHNSON. Well, I will agree with Ms. Gustafson. It really does depend on the individuals.

We certainly saw that within the OIG's office within DHS we had some real questions in terms of independence, and I think that was because of an individual, not necessarily the Act.

But, again, you are dealing with people, both in the agencies and the IG's office. So I think it is a serious concern in terms of how you maintain that type of independence.

In terms of the consolidation, I see a real problem if you just take an OIG from a particular agency and then provide other smaller agencies that that IG is going to have to provide those inspections for. What type of attention are they going to get? Just speak to that issue.

I think from my standpoint it almost seems better to have completely independent OIGs for five different agencies rather than have one associated with one agency and then offload four addi-

tional agencies to that one because, again, I just think they are going to have far less attention. So can you speak to that problem?

Mr. GRATACOS. Well, in our situation, the draft bill talks about OPIC. And OPIC fits very well with what we do already, and that is what IG Carroll was mentioning before. It is the same type of transactions we look into. One is the investment side, which is risk insurance, but they all go into that same process of underwriting. So, for us, we would have the infrastructure to take over OPIC, and it would be an easy match.

Now there was a discussion a few years ago on the House side to bring also—I think it was the U.S. Trade and Development Agency (USTDA) under us. That was a little different; so, grants. We do not do grants.

So, even though it is trade, it is grants. So USAID might be better equipped to handle that.

Those are the challenges that we have.

And, to add to the OPIC thing, the discussion they had a year ago or 2 years ago on the House side, they were talking about only in the audit component and only for a period of time—for 2 years, 3 years. We did not think that was effective.

I think we need full authorities in the IG Act because many times—and it happens to us at Ex-Im Bank—you are looking at a transaction in an audit and you find fraud. And so we are equipped right on the spot to investigate it.

Senator JOHNSON. Let me go to that because it has been said that it is very important that the missions be similar. I want to just really probe that a little bit.

I mean, a financial transaction is a financial transaction. No matter what type of agency, fraud is fraud. There are certain auditing standards. There is a process to go through.

I mean, how important is it that the IGs are assigned to agencies with similar missions when you are talking about financial transactions that are common between different agencies no matter what their agency mission is?

Mr. GRATACOS. I think from our perspective we are looking at, for example, at a product's financial structure overseas, right. It is a little bit different than a financial transaction on the government perspective. So they are more commercial in nature.

That is what OPIC does, too. That is what we do. That is what multilaterals do. World Bank, the Multilateral Investment Guarantee Agency (MIGA), the Inter-American Development Bank (IDB). And so that is a different component.

Now, when we are talking about financial statement audits, there are very similar components. You can see skills that you can transfer across agencies.

Performance audits, that is the Yellow Book. We can do that across agencies.

But there are certain components and a certain level of sophistication on the transactions that are involved in some agencies that I think the expertise or the knowledge of at least the basics of the transaction can really save you a year or two of learning how it works.

Senator JOHNSON. OK. My time has run out.

Anybody want to chime in just on the questions I had.

Mr. SPARKS. Just back to your first question, Senator, I guess as a smaller IG I recommend individual IGs as you were talking about for each agency. I think the presence and the knowledge that you gain with that agency cannot be substituted by a part-time IG from another IG office, particularly a large IG office.

Based on 30 years in the larger IGs, I recognized that we assigned and put highest priority on highest priority projects and risks that the agency had. And it is just human nature; we are not going to put our best staff on a \$1 million or \$2 million entity.

So I think a separate IG with a significant budget and a sensitivity to a program is well worthwhile.

With respect to the consolidation, what I was talking about is very small agencies that have similar things. When I talked about six economic development commissions, we do exactly the same thing, and maybe one IG who knows grants is sufficient.

I have a counsel from another OIG and as Chairmam McCaskill said, we have some challenges. Some of us have to get legal counsel investigative help. And we generally have agreements with an IG that has similar responsibilities as we have if we are going to conduct a fraud investigation or get some legal opinions.

So I think I agree with you on that, if possible, a separate IG is best. I do not think it costs any more to have the separate IG even though it is a small staff, with the onsite presence and knowledge of that agency, as opposed to farming it out to another agency who may or may not have targeted staff to put that oversight and may not have the priority that they would have for their regular programs.

Senator JOHNSON. OK. Thank you.

Senator MCCASKILL. I know this is not in the draft, and I know this is going to stir things up a little bit, but honestly, if I could wave a magic wand, I look at the model of the office that I am most familiar with, which is the State auditor's office, we had the authority to go in anywhere, in a wide variety of places, with a wide variety of different missions, whether it was a highway commission or a county government or whether it was the prison system.

And it was our experience that having someone who had done that audit before was helpful, but it was also helpful to have someone on that audit team who had never done that audit before because you had fresh eyes. You had someone who did not have a built-up relationship with the administration and that agency. You had someone who was taking a fresh look at it combined with the expertise of somebody on the team that knew the agency well.

So, if we have 41 agencies that have nothing, why couldn't we do an Inspector General for small agencies that has a staff large enough to develop the expertise—because here is the problem we are going to have.

I could easily have you in front of this Committee, Mr. Carroll, and talk about your risk assessment and say to you, what in the world are you doing, looking at \$10,000 program, when we are hemorrhaging billions in Iraq or Afghanistan, because all of you are tasked professionally with going to the places where there is the highest risk.

And my problem is that we are never going to get economies of scale in some of these very small agencies in terms of overhead un-

less we are going to go to CIGIE or some other organization to provide overhead, which I agree; I think the independence of the overhead—just the day-to-day H.R. administrative things—is something that can really stress a small IG office to the point that they are consumed with that instead of figuring out what rock they need to look under.

So assuming that there would not be a widescale panic in the IG community that everyone was going to be disrupted and their plans for the next 10 or 15 years all of a sudden have disappeared in front of their eyes because they are pretty comfortable where they are and they are pretty sure they can stay at that agency until retirement.

Other than that problem, what problem would you see with us trying to fashion the Inspector General of Small Agencies with the kind of competence staff and with the requirement that every agency would have to have a line item to support that agency in commiserate with the size of their agency and the risk they represent?

Mr. CARROLL. I will just speak to my own universe.

I do not see any problem with that, theoretically, but practically speaking, in my part of the world, it would be very difficult to find a domestic IG that has the kind of expertise and, like I said before, infrastructure.

We are a Foreign Service organization. We have people posted around the world. And we can bring those people and that expertise and those experiences with SAIs and local law enforcement. We can bring all of that to bear on any of those five agencies' programs being implemented in those countries.

So I do not disagree that domestically that might work, but I think in my particular case, if you were looking to take IAF and the U.S. African Development Foundation (USADF) out from under my portfolio, or OPIC, I would not argue with that. I would be happy to do whatever you wanted.

Senator MCCASKILL. I get the international distinction. I think there is some merit to that.

Mr. CARROLL. Right. But, domestically, I think it could make sense, absolutely.

Senator MCCASKILL. I know you have to go back to the IG communities. So I have to be careful here because I am sure this would not be the most popular proposal that has ever been put out by Congress.

Mr. SPARKS. Well, actually, I agree. One of my recommendations—I was not necessarily talking about established IGs because I do think we want to look a lot harder at them.

But one of my recommendations, particularly for some smaller entities that are being proposed, is one IG. I think that provides an IG staff that could have a couple of auditors, a couple of inspectors, a couple of evaluators, a lawyer and a couple of investigators. And they can gain the expertise on those very small programs fairly quickly.

A lot of the programs I looked at are basically similar. Providing scholarships to high school students—for example by some of the smaller entities.

Ronald Reagan, I think, proposed an Inspector General for the Executive Branch that would be like GAO and put us all in one IG.

There have been conversations about whether CIGIE should establish a staff to do it. I do not think that is practical. We would have 72 IGs trying to agree on an audit report, and we would never get it out. We are already late on getting most of them out, that type of thing.

So I do not think it has benefits to consolidate in that sense.

One of the things that I know my fellow IGs probably would not like is if I discussed the practicality of not assigning them to a larger OIG but consolidating some of the small ones. And least one small IG agrees with this concept. Most of them probably would not.

Consolidating several of the smaller IGs, rather than putting them into a major IG office which does have a lot of other priorities—I think that is a more practical thing maybe to be discussed further, and I believe this is done in a couple of instances in your proposal.

But I think the concept of what you are saying can work, particularly if you do not have special circumstances, like AID or the programs on FAST.

I have worked with many State auditor offices in Appalachia, and as you say, they have a variety of programs that they operate.

Ms. GUSTAFSON. Senator, I think basically, as Ms. Davis had noted in her opening statement, what you are talking about are policy questions over how this oversight is going to get done.

And so I think that I am, again, very grateful that these conversations have been happening already. I think that this hearing is a good way to, again, have more of these conversations.

I think the next most helpful thing will be to talk to the IGs who are directly affected. I think that they would, as Mr. Sparks said, have a lot of opinions because I think in the end it gets pretty granular.

I think, this is a very bold idea. This is kind of a big swing.

So I think that this is something that would be—would benefit from a lot more conversations with not only the small IGs affected but the big IGs. When you look at your draft bill, there are some responsibilities that would be given to some large IGs that I think it would be helpful to have those conversations as well.

And then in the end, what it is, is a policy decision.

Just pretty quickly, when you talk—and of course, I am well aware of the State auditor model.

The only difference—and I think one of the things that you will hear about and one of the things you are grappling with is one of the differences is when you are not located within the agency.

I do have to say that one of the big strengths about the IG Act in general and one of, I think, the strokes of genius that really happened in the IG Act was to say here is this incredibly independent entity, but you are in that agency.

And there are definitely benefits to that. I can tell you that there are benefits to that—being able to be there in place and to be able to walk down the hall. And, to a certain extent, there is a different tenor to the conversations when you are not the State auditor kind of coming in.

That does not mean that it is insurmountable. I just think it is something that is worth talking about, and that is why I think it

is an important conversation to have, especially when you are talking about IGs that maybe are in those agencies already.

I think it is going to be an important conversation and just something to think about.

Senator McCASKILL. It may be that you could work a model, that you could have someone assigned interior to every agency, but then you would have the problem of the administrative overhead taken care of. You would have continuity in case there was someone—part of problem is we lose an IG and especially if it is—sometimes it takes forever.

I mean, we have had major IGs sit vacant for years in this country, which is very frustrating.

And, for these small agencies, it would provide continuity if they were there under the auspices of a small agency IG but assigned to actually be within the agency for their work.

Mr. CARROLL. And, Senator, we do that with MCC. In MCC's enabling legislation, there is a hard cap, and that is another thing maybe we can talk about—the hard cap. There is a hard cap of \$5 million set aside in MCC's budget for oversight, and so we draw off of that.

And because of the scale of MCC, about a billion dollars a year, we have created a separate infrastructure within the USAID OIG to address MCC. And we bill that direct labor back, and we bill the—

Senator McCASKILL. We have a hard cap of \$5 million on a budget of a billion?

Mr. CARROLL. Yes. And I saw in the draft legislation some potential caps and some potential—for example, I may have misunderstood, but the IG would do one audit by a certain amount of time. I would strongly recommend no cap on audit and no cap on budget.

If we can develop with GAO's help—and they have looked at this in the past—a percentage based on the complexity and that sort of thing—

Senator McCASKILL. Right.

Mr. CARROLL [continuing]. I think that would be ideal.

Senator McCASKILL. OK, Senator Johnson.

Senator JOHNSON. Mr. Sparks, you, to me, spoke the magic words here—prevention and deterrence. If there is a criteria that we really ought to be looking at as we try and design something here to take care of the small agencies, prevention and deterrence would probably be at the top of the list in terms of how we design this thing because you are a lot better off preventing and deterring than you are mopping up a fraud after the fact.

So, Mr. Carroll, we were talking about the required audits, required inspections. Do any of these small agencies have any of those?

In other words, if they do not have an IG office, are those inspections and are those audits being performed?

Mr. CARROLL. Well, I am glad you asked the question because it is a mixed bag. For example, we have had discussions with the smaller agencies on whether some of this applies to them.

IPERA, for example. There are discussions with the foundations. Does, in fact, the IPERA legislation apply to them?

And so we would say yes, but then we have to direct them to OMB to get the final answer.

So that is why I think that if you capture all of these agencies under the IG Act, then the ambiguity is completely cleared up.

The other thing I would say, Senator, related to prevention. We have a very robust program in USAID OIG—and I am sure the other agencies do as well—of what we call fraud awareness. We have our auditors and investigators go out and brief agency employees and brief agency contractors on what fraud looks like.

And, inevitably, we are going to get calls on the hotline or people come right up to us—I saw that. And then they become a source, and then we create an investigation or an audit.

So I do believe that—and I am not knocking the smaller IGs, but we have a very robust fraud awareness program/prevention program, and we have the expertise to implement that.

And I am not saying that the DFE IGs do not. But, certainly, when you have scale, then you can wall off those resources available to do those kinds of things that are not audits and are not investigations.

Senator JOHNSON. In the private sector, we have something called the Keep It Simple, Stupid (KISS) principle.

To me, it makes perfect sense that if you are gaining your authority from multiple years, multiple layers of rules and regulation, it makes an awful lot of sense to centralize that authority under one act—

Mr. CARROLL. Agreed.

Senator JOHNSON [continuing]. So that simplifies things.

And then, if there is some way, whether to use CIGIE or maybe within a newly created office of Inspector General for smaller agencies, if you also have some sort of gathering space, an accumulator of best practices, in terms of fraud prevention, fraud notification, just education, that is what we have to look for. That is what I think would be far more effective. Mr. Sparks.

Mr. SPARKS. Just to comment on deterrence and prevention, which I totally agree with, I mean, one of the things you look at—and I am sure folks have—is you look at the small IGs and you look at some of the audit reports, you are going to see in the tables a lot of zeroes, where there are not big monetary benefits.

Well, a lot of the small IGs are in regulatory agencies that are not putting out—that are having specific programs or they are mediating things. I think the key to a smaller IG is the prevention and deterrent.

Where we have grant programs, like my agency, we have dollars because you are looking at questioned costs and ineligible costs.

If you talk to the agency head that I have, he would tell you the greatest benefit of our office is we go out to 25 or 30 grantees a year and do grant audits of contractors. And all those grantees of the 400 grants a year we make, they think we are coming.

I put it with Internal Revenue Service (IRS) audits. There are very few personal tax audits of people now, but most people worry about an IRS audit and they make out their taxes correctly.

And I think the benefit of a small IG is not that they have a two-person staff or a three-person staff. It is how effectively they use that in prevention and deterrent. If you can accomplish that, you

have accomplished the biggest mission at the most value you are going to have.

You are never going to see the small IGs with big dollars.

On the investigative side, I think the impact of our investigations and the magnitude are probably a lot less because we have smaller agencies and smaller dollars. And we try to use another IG with the expertise in the investigation field and in that area to do it, and I think, we have been fairly successful.

One quick comment since you may recognize I am a little biased on smaller IGs. On the administrative cross, I have not run into a problem. We do use our human resources (HR)—our agency for H.R. services. Obviously, we get counsels from other IGs if we need them.

It can be a problem. I have not really seen it because our costs are relatively small because we have a small staff.

And one of the things I wanted to mention before we conclude is I thoroughly agree with the discussion you had where you talked about having GAO look at the mandate in reviews.

What are required of IGs at small agencies?

Senator McCASKILL. Right.

Mr. SPARKS. How much staff is put in a financial statement and Federal Information Management System monitoring?

We have to let the contracts. Is a one-year audit required of a small entity?

And I think looking at that because when you ask what are we responsible for we have a lot of mandated requests from Congress for financial statement audits, improper payments, travel, credit card use.

And, generally, a lot of times, the legislation comes down and says all IGs will do a review.

I know we had one about use of government vehicles. Well, we have one leased vehicle used part-time. That is not going to affect the ecology of the world.

But I think looking at the mandated things for IGs is a good initiative.

I would also look at the mandated audits that a small entity is required to do. A lot of these small entities that you are looking at, I think, do require financial statement audits.

Now do they need them every year? Do they need IG monitoring every year? I think we can get to a point of over-monitoring and over-auditing, and there have to be risk assessments to see how bad it is, just like there should be a risk assessment of how much staff is going to be required to service these new entities that you are looking at to put into it.

Senator JOHNSON. OK. Well, again, I appreciate your testimony. I think you are exactly the kind of folks we ought to be talking to in depth, in detail, as we craft this so we can engage in those best practices so that the dollars that we put to use are put to effective use, as well as the personnel time.

So, again, I appreciate the testimony and appreciate the hearing.

Senator McCASKILL. I do, too, and I think we will begin working in earnest to come up with a proposal that makes the most sense without disrupting the IG community too much.

I would appreciate, Ms. Gustafson, if you would check with CIGIE about formalizing recommendations they might have, particularly if there is any appetite for CIGIE being used as something other than what it is now.

Could they be the clearinghouse for assigning auditors to small agencies on an ongoing basis? Does it make sense?

I agree with Mr. Sparks. A recipe for disaster would be having CIGIE have to decide what the audit findings were going to be. I would not want to be in that room. I think there might be some serious disagreements.

But we would like to get some formal input from CIGIE on the proposed legislation and whether or not it should be tweaked or changed in any way and maybe look at, seriously, a model of an Inspector General for Small Agencies and what that might look like also.

We are going to try to move this. I think honestly this is something we could get passed. I cannot imagine that we would find something to fight about over providing a minimal amount—

Senator JOHNSON. We might.

Senator McCASKILL. We might, but I do not think so.

Senator JOHNSON. No. This is just a good government piece of legislation.

Senator McCASKILL. Yes, especially if Senator Johnson and I stay joined at the hip on not going too far but going far enough.

And I think removing some of the mandates for these smaller agencies is a terrific thing to do. It is stupid that you are having to spend a lot of time on paperwork for a partially one leased vehicle because we have mandated that.

We ought to have it like what we did with banks. I mean, if you were under a certain amount of assets, we relieved them of some of the responsibilities in Dodd-Frank.

We should do the same thing on these mandates. If you are under a certain threshold, we should look at those mandates and see if they really make sense.

So we welcome—and GAO, too; your input is essential, Ms. Davis—all of you, if you would help us craft this in a way that makes sense and will accomplish the goals I think we all hold in common, which is making sure that we do not have agencies out there that know nobody is going to knock on their door.

I do not like any government agency not thinking somebody is going to knock on their door. Ever.

Mr. CARROLL. Senator, could I just make one more comment?

I wanted to thank you personally for your trust and faith in the statutory IGs with the National Defense Authorization Act (NDAA), the 2013 NDAA, and the OCO legislation.

I just talked to Jon Rymer and Steve Linick and we guarantee that we will be able to deliver, God forbid, in the next overseas contingency operation. So thank you very much for that.

Senator McCASKILL. That is great. And I am hoping I do not have to be here to hold you to that.

I am hoping we do not have another OCO, but we probably will.

And no one is going to be more angry than I am if we do not have lessons learned. This has been a painful process to get lessons learned in the contingency space.

By the way, you should know, Mr. Carroll, I am pressing the Pentagon on this as to whether or not they really can justify the infrastructure endeavors they have undertaken in a contingency with a counterinsurgency effort. I am not convinced that the AIF or that the SERP money on steroids has, in fact, been effective.

And this notion that we keep transferring back and forth from AID to Defense, AID to Defense—who is building the highway? Who is building the health center?

It is mind-boggling how this has gone back and forth, without rhyme or reason and without any data to support it.

So I am on them, and I am asking them, you better show us where the data is that makes any sense for the military to be doing this infrastructure as opposed to AID.

As you can tell, I can get jazzed about that.

And, by the way, that is billions and billions of dollars.

Mr. CARROLL. That it is.

Senator McCASKILL. So it is real big money.

Thank you all very much for your service and the jobs you hold and for your time today. We appreciate it.

[Whereupon, at 12:05 p.m., the Subcommittee was adjourned.]

APPENDIX



STATEMENT FOR THE RECORD OF

PEGGY E. GUSTAFSON
INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION
CHAIR, LEGISLATION COMMITTEE, COUNCIL OF THE INSPECTORS GENERAL FOR
INTEGRITY AND EFFICIENCY

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT REFORM
SUBCOMMITTEE ON FINANCIAL AND CONTRACTING OVERSIGHT
U.S. SENATE

“OVERSIGHT OF SMALL AGENCIES”

APRIL 10, 2014

Good morning, Chairman McCaskill, Ranking Member Johnson, and Members of the Subcommittee. On behalf of the Chair of the Council of the Inspectors General on Integrity and Efficiency's (CIGIE), I am honored to represent the Federal Inspector General (IG) community this morning and to discuss opportunities to strengthen agency oversight through the community of Inspectors General. I currently serve as the Chair of the CIGIE's Legislation Committee.

Let me begin by thanking this Subcommittee, on behalf of the IG community, for your continuing support of our mission and your interest in our work. This support is longstanding and bipartisan, and we are truly grateful.

I am pleased to report to this Subcommittee that the Inspector General Reform Act of 2008 (or IG Reform Act) is working as intended. The CIGIE serves a leadership role and is the core of the IG community. Together, the work of the IG community resulted in significant improvements to the economy and efficiency of programs Government-wide, with potential savings totaling approximately \$46.3 billion. With the IG community's aggregate FY 2012 budget of approximately \$2.7 billion, these potential savings represent about a \$17 return on every dollar invested in the OIGs.

Notwithstanding these results, OIGs do face certain challenges as they work to improve the efficiency and effectiveness of government programs. Our principal challenges pertain to independence concerns and to timely access to information. In recent years, the CIGIE has been advocating for additional tools to alleviate these challenges and enhance our ability to do our

jobs for the taxpayers. The IG Community is grateful for the introduction of S.1953, *Oversight Workforce Improvement Act*, by Senators Tester and McCaskill and for the support of the bill by its cosponsors. This bill recognizes certain challenges faced by the IG Community and addresses most concerns offered by the CIGIE in its March 19, 2013 letter to the Office of Management and Budget, which outlines the CIGIE's current legislative initiatives:

Paperwork Reduction Act

The CIGIE has recommended that the Paperwork Reduction Act (PRA) be amended to exempt Federal IG offices from its requirements. The PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. While the 1995 PRA Amendments specifically exempted independent regulatory agencies from these requirements, and continues to exempt the Government Accountability Office [44 USC 3502(1)(A)], they were silent on the question of application to IGs. These exemptions would enhance the independence of IGs and remove lengthy processes that are better aligned with the role of Government interactions with the public, than oversight of the Government entity by the OIG.

The PRA requires a lengthy and burdensome approval process for the collection of information by a Federal agency. The IG Community has advocated for a change to the Paperwork Reduction Act in order to facilitate the independent reviews of IGs at least since 2000. In July 2000, the Honorable Gaston L. Gianni, Jr., who was then-Vice Chair, President's Council on Integrity and Efficiency, testified before the then-U.S. Senate's Committee on Government Affairs. IG Gianni testified that many IGs believe that being subject to the review process requirements of the PRA conflicts with their statutory mission to be independent and nonpartisan. He asserted that these requirements affect IG's ability to carry out audits and evaluations required by members of Congress, through law or by requests, in a timely and effective manner. The CIGIE continues to share the perspective of its predecessor organization—the PCIE.

While agency heads may generally supervise IGs, they are not to "prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation." Yet the PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. We recognize OMB's wealth of knowledge in the formulation and conduct of surveys. Indeed, our community may wish to informally seek its advice in the areas of survey formats, techniques, and methodologies. However, application of the PRA to OIGs has both process and substance implications.

Congress increasingly requires IGs, through law or by formal request, to conduct specific audits of agency programs in a very short time. Part of the audit process may involve gathering information or other data from surveys of agency contractors, grantees, those entities subject to agency regulation, or the public. Subjecting such surveys to the review and approval process could impact our ability to provide an accurate and professional product under the tight deadlines required by Congress. The substantive issue is whether Congress intended that either departmental officials or OMB have authority over OIG information collection efforts that are key to the performance of a successful audit. We believe the statutory independence, mission,

and dual reporting responsibility of IGs warrants similar relief for our Community as afforded to the Government Accountability Office (GAO).

5 USC § 552(b)(3) Exemption to Protect Sensitive Information Security Data

Since the Supreme Court's 2011 decision in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), OIGs across the Federal government have raised serious concerns that information related to Federal agencies' information security may be unprotected from disclosure under the Freedom of Information Act (FOIA). Prior to *Milner*, a number of Federal agencies, including OIGs, used the "high 2" form of FOIA's Exemption 2 to protect this sensitive information, including audit workpapers and agency records related to agency information security vulnerabilities. After *Milner*, this exemption is no longer available. Although other FOIA exemptions apply to classified information and documents compiled for law enforcement purposes, no single exemption currently covers the extremely large area of documents that analyze, audit, and discuss in detail the information security vulnerabilities of the Federal government.

The CIGIE is proposing a narrow exemption covering information that "could reasonably be expected to lead to or result in unauthorized access, use, disclosure, disruption, modification, or destruction of an agency's information system or the information that system controls, processes, stores, or transmits." This language tracks with existing Federal Information Security Management Act language found in 44 USC § 354(a)(2)(A), and it is suggested that this intention be included in any legislative history that may be developed.

Technical Amendments to the Inspector General Reform Act of 2008

The CIGIE also has proposed certain amendments to the IG Reform Act. The proposed amendments seek to accomplish the following:

- Codify the following provisions from the IG Reform Act in the Inspector General Act of 1978: (a) the designated Federal entity inspector general pay provisions set forth in section 4(b) of the Reform Act; (b) pay provisions for career Senior Executive Service personnel that become inspectors general set forth in section 4(c) of the Reform Act; and (c) the authority of the Integrity Committee to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel provided in section 7(b) of the Reform Act.
- Authorize all executive OIGs to fund or participate in CIGIE activities (the current language "department, agency, or entity of the executive branch" does not include certain designated Federal entities).
- Replace "agency" with "Federal agency, establishment or designated Federal entity" so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints.

- Clarify that reports that OIGs must post on their web-sites includes audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements.
- Repeal parts of the 2009 Omnibus Appropriations Act that conflict with codified Reform Act language regarding OIG websites.
- Amend Section 11(d) of the IG Act to designate the Special Counsel and the Director of the Office of Government Ethics, or their designees, as members of the Integrity Committee.
- Correct various typographical errors.

In addition to the legislative changes championed by S.1953, *Oversight Workforce Improvement Act*, the CIGIE feels strongly that OIGs should be exempted from the Computer Matching and Privacy Protection Act relative to using electronic means to identify those who improperly receive Federal assistance and/or payments and subsequently, seek removal from the program and/or recoveries after verification and applicable due process. This would improve program efficiency and enables the Government to focus resources on eligible applicants.

The Computer Matching and Privacy Protection Act requires a protracted review and approval process before computer matching can be performed to identify improper or fraudulent disaster or other assistance payments. This approval process involves concurrence by program officials within the agency subject of the review, presenting significant independence concerns for the Office of Inspector General. The timely use of computer matching to identify those who improperly received Federal assistance, and subsequently removing them from the program after verification, improves program efficiency and enables the government to focus resources on eligible applicants. Moreover, timely computer matching can under optimum conditions prevent improper payments from occurring in the first instance and, even following payments, usually leads to enhanced recovery of improper payments.

CIGIE's Role within the IG Community

As an IG, I am grateful that IGs across the Government have a voice through CIGIE and have access to training and other resources that did not exist prior to the IG Reform Act. The IG Reform Act established CIGIE to serve as a unified council of statutory Federal IGs, to carry out two key missions:

- address integrity, economy, and effectiveness issues that transcend individual Government agencies; and
- increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

CIGIE's evolution into an important supporting institution for its members is strengthened by the efforts of leaders in the IG community; Congress; colleagues in the OMB and the GAO; other

Federal agencies, law enforcement, and professional organizations; and private-sector supporters who share a commitment to improve Government programs. CIGIE's members currently include 72 IGs from the executive and legislative branches of Government, as well as 6 senior administration officials with related portfolios and responsibilities. The CIGIE currently lacks a direct appropriation, with funding provided through an OMB budget mechanism and through voluntary funds provided by the CIGIE members. The budget mechanism utilized by OMB for the CIGIE involves 17 specific OIGs including a certain CIGIE allotment in their respective budget requests, which if fully appropriated, their sum would total the complete CIGIE budget request. This mechanism has proved challenging to manage as there never has been a funding cycle during which all 17 OIGs received the CIGIE allotment in their respective appropriations. Without voluntary CIGIE member contributions, which strain their individual operating budgets, the CIGIE would experience significant challenges in carrying out its missions.

In accordance with CIGIE's primary mission, over the past several years the IG community has identified and addressed a number of issues that transcend individual agencies. CIGIE has issued reports on such topics as cybersecurity, suspension and debarment, the use of new media, the effectiveness of the Chief Financial Officers Act of 1990, disaster preparedness programs, international trade and competitiveness, IG hotline operations and whistleblower protections, the Federal Audit Clearinghouse, and IG oversight of the American Recovery and Reinvestment Act of 2009. These reports and others are available on CIGIE's website at www.ignet.gov.

CIGIE's training and professional development mission is addressed through our Training Institute, which offers training to OIG audit, investigative, inspection and evaluation, leadership, and mission support personnel. Though the institute is still in a developmental phase, in FY 2012, the institute delivered 55 specialized training courses to 1,677 students, representing a 17 percent increase of students from the previous year.

CIGIE's standing committees are active bodies that are responsible for, among other things, developing professional standards that apply to overall OIG operations, as well as OIG audits, investigations, inspections, and evaluations. CIGIE, through its committees, also manages a peer review program of IG audit and investigation operations that evaluates OIG adherence to the professional standards. In FY 2012, CIGIE initiated a pilot program to peer review OIG inspection and evaluation activities on a voluntary basis. These programs play a critical role in advancing the professionalism of OIG operations and enhancing confidence in the quality of OIG products.

Importance of Agency Oversight by an Inspector General

Federal (or statutory) OIGs promote economy, efficiency, and effectiveness in Government operations and help detect and deter fraud, waste, abuse, and mismanagement. The stated purpose of the Inspector General Act of 1978, as amended (IG Act), is to create an independent and objective unit within specified agencies whose duty it is to combat fraud and abuse in the programs of that agency. To this end, each IG is responsible for conducting audits and investigations of the programs and operations of its agency, and undertaking other activities, such as inspections and evaluations, to "promote economy, efficiency and effectiveness" in those programs. Importantly, each IG also is to keep the agency head and the Congress "fully and

currently informed” about problems and deficiencies in the agency. The IG Act contains a variety of statutory guarantees of OIG independence, designed to ensure the objectivity of OIG work and to safeguard against efforts to compromise that objectivity or hinder OIG operations. It is these guarantees of independence that make statutory IGs unique.

It is important to note that there are two distinct types of IGs under the IG Act; those in “establishment” agencies and those in “designated Federal entities” (DFE). Federal establishment IGs are appointed by the President with Senate confirmation, whereas DFE IGs are appointed by the agency head, which may be an individual, a board, or a commission. With few exceptions, both types of IGs share the same authorities and responsibilities.

Congress and the taxpayers believe that an independent IG is a “strong right arm” to any agency head who seeks to identify and eliminate fraud, waste, and abuse in agency programs and manage those programs effectively. As such, the IG Act established IGs within specified agencies, with limited supervision by the agency head, and authority to exercise unprecedented independence. The IG Act specifically prohibits agency management officials from supervising the Inspector General. This important organizational independence removes the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.

The IG Act affords OIGs the authority to mount a multi-disciplinary approach to agency oversight. Each OIG has a broad statutory mandate to conduct audits and investigations relating to the programs and operations of the agency and to conduct other activities for the purpose of promoting economy and efficiency in the administration of the agency. Within this broad mandate, the IG is given full discretion to undertake those investigations that are, in the judgment of the IG, “necessary or desirable.” Though the IG reports to the agency head, even that official may not compromise the initiation or conduct of an OIG audit or investigation.

OIG audits are conducted in accordance with federal audit standards established by the Comptroller General. In addition, OIGs coordinate with the GAO to avoid duplication in federal audits. OIGs also establish criteria for using non-federal auditors (typically, CPA firms) and to ensure that such auditors comply with federal audit standards.

OIGs are charged with not only investigating or auditing fraud, waste, and abuse after they have occurred, but also identifying vulnerabilities and recommending programmatic controls that would, when enacted or implemented, strengthen controls or mitigate risk. To this end, some OIGs, but not all, have separate offices devoted to conducting program evaluations. Others fulfill this responsibility through their audit offices. Where an OIG does conduct program evaluations and inspections, the IG is charged with tracking and reporting these recommendations in its Semiannual Report to the Congress, just as it reports its audit findings and recommendations.

The objectivity of these fact-finding efforts is enhanced by the considerable independence given the IGs. This independence enables IGs to fulfill a fundamental responsibility to keep the agency head and the Congress informed about problems and deficiencies in agency programs

and operations. However, the statutory requirement for operational independence with respect to IG audits, investigations, and evaluations does not foreclose coordination and cooperation between the IG and agency management. For example, OIGs generally invite agency management to comment on the IG's annual work plan; in this way, managers can offer suggestions on risk areas they perceive in their day-to-day operations of agency programs. Consultation with subject matter experts in the agency's program offices also can enhance OIG work products.

OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations and Federal law. In conducting investigations, whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report that evidence to the Department of Justice. These reports are to be made directly to the Department of Justice, without prior clearance by agency officials outside OIG.

Law Enforcement Authorities: All statutory Inspectors General are authorized to administer oaths when necessary in performing their duties. In addition, the IG Act authorizes criminal investigators in the offices of 23 Presidentially-appointed Inspectors General to exercise law enforcement powers—namely arrest, firearms, and warrant authorities—while conducting official duties.¹ The Act also provides a mechanism whereby the Attorney General may, after an initial determination of need, confer law enforcement powers on investigative personnel of other OIGs, including those in DFEs. Whether conferred directly by statute or by Attorney General designation, OIGs receiving law enforcement authorities under the IG Act must exercise those law enforcement powers in accordance with guidelines promulgated by the Attorney General. Each OIG also undergoes periodic peer review of its exercise of law enforcement powers.

In the past, the CIGIE has played an important role in facilitating requests for assistance to ensure effective agency oversight by an OIG. Such requests have included needs for audit, investigative and complaint handling services. Though CIGIE cannot provide these services itself, CIGIE works to match these needs with OIGs that may be able to enter into reimbursable agreements to provide the service. However, as resource constraints persist, OIGs may be less able to enter into such arrangements. Where OIGs that lack law enforcement powers (as conferred by statute or by the Attorney General), CIGIE has served as a quick and efficient means to communicate requests for such support from its Members. Similarly, through its Integrity Committee, the CIGIE coordinates with its Members for investigative manpower and thereby provides for independent investigations of allegations of wrongdoing by IGs and those that directly report to them. CIGIE also has been called upon for other varied ad hoc requests for assistance by its Members to ensure effective oversight of the agency(ies) under the particular OIG's jurisdiction. CIGIE will continue its facilitation role and its support of requests to promote efficiency and effective oversight.

This concludes my testimony. Thank you again for inviting me to testify today before the Subcommittee about the role of CIGIE and opportunities to strengthen agency oversight through

¹ In addition to these IGs, four additional OIGs – Department of Agriculture, Department of Defense, U.S. Postal Services, and Treasury IG for Tax Administration – derive law enforcement authority from legislation other than the IG Act of 1978, as amended.

the community of Inspectors General. I would be pleased to address any questions you may have.

Statement of the Honorable Osvaldo Luis Gratacós
Inspector General
Export-Import Bank of the United States
before the
United States Senate
Committee on Homeland Security and Government Affairs
Subcommittee on Financial & Contracting Oversight
April 10, 2014 at 10:00 am

Good morning Madam Chair, Ranking Member Johnson, and distinguished members of the Subcommittee.

Thank you for the invitation and opportunity to testify before you today about the oversight of small federal agencies, specifically, the challenges small agency Offices of Inspector General (OIGs) face when fulfilling their missions. As the Inspector General at the Export-Import Bank (Ex-Im Bank), I have experienced some of these challenges first hand. During my testimony, I would like to summarize Ex-Im Bank's mission, present a short history of the Ex-Im Bank OIG, and describe some of the challenges this office has faced since its inception. Before I continue, I would like to thank the Almighty for this opportunity, my family, and the members of the Ex-Im OIG staff for their hard work.

I. Ex-Im Bank

Ex-Im Bank is the official export credit agency (ECA) of the United States. It supports the financing of U.S. goods and services in international markets, turning export opportunities into actual sales that help U.S. companies of all sizes create and maintain jobs in the United States. Ex-Im Bank has programs to address short, medium, and long-term needs of exporters; assuming the credit and country risks that the private sector is unable or unwilling to accept. Ex-Im Bank also helps U.S.

exporters remain competitive by countering the export financing provided by foreign governments on behalf of foreign companies. At the same time, Ex-Im Bank must safeguard taxpayer resources by determining that there is a reasonable likelihood of repayment with respect to each of its transactions.

In fiscal years 2012 and 2013, Ex-Im Bank approved over \$60 billion in export transactions - this is in addition to \$32 billion in FY 2011. Ex-Im Bank's portfolio has increased by 94.8% since 2008 (\$58.4 billion in FY 2008 vs. \$113.8 billion in FY 2013). In the current Charter, Ex-Im Bank has authority to approve up to \$140 billion in export transactions.

II. Ex-Im OIG

Ex-Im Bank OIG was statutorily created in 2002¹, but the Inspector General did not officially take office until August 2007. The OIG has achieved noticeable success in performing its statutory duties. Specifically, since FY 2009, the OIG has issued over forty (40) audit, inspections and special reports containing one hundred and seventy (170) findings, recommendations, and suggestions for improving Ex-Im Bank programs and operations. Our investigative efforts have resulted in a number of law enforcement actions, including: over seventy (70) indictments and informations; forty-five (45) convictions; forty (40) guilty pleas entered in court; over four hundred (400) management referrals for enhanced due diligence actions; and approximately \$300 million in court imposed restitution, forfeitures, repayments, and cost savings efforts. All of this has been accomplished with a very modest budget starting at approximately \$1 million and gradually rising to about \$5 million in FY 2014.

III. Operational Challenges

All of the OIGs face operational challenges in fulfilling their mission. These challenges are more pronounced in smaller agency settings. In order for the OIGs to effectively detect fraud, waste, abuse and to enhance their ability to improve efficiency of agency operations, small agency OIGs need the proper administrative support and funding. Because of limited resources, small agency

¹ Export-Import Bank Reauthorization Act of 2002, P.L. 107-189, Sec 22 (June 14, 2002).

OIGs often must rely on the agencies they oversee to provide essential support functions like information technology, personnel management, and financial management. As a small agency OIG, I have experienced first-hand some of the limitations, challenges and frustrations that accompany the dynamics of small agency oversight. Some of the most important observations and challenges related to OIG operations, as I experienced them as part of my role at Ex-Im Bank, are:

- Information Technology (IT) Support. Ex-Im Bank still uses an ineffective, inefficient, and fragmented IT platform and infrastructure composed of several legacy systems and databases. These systems and databases do not effectively and accurately interface with each other – compromising data integrity, creating duplicative information, and creating unreliable files. Further, these systems make data mining burdensome and time consuming. Since 2012, Ex-Im Bank is engaging in an IT infrastructure modernization effort focused on replacing legacy systems and improving quality and access of its data. In essence, when requesting computer acquisition and IT support in order to perform its mission, OIGs place some burden on the hosting agency. Inevitably, this interaction leads to a dependency relationship between agency senior management and the OIG. More troublesome, however, is the potential access to OIG systems, emails, and databases that that agency senior IT managers may have.
- Human Resources Support. One of the most important factors for the OIGs in maintaining their independence is the ability to hire their staff without obstruction or undue influence from the hosting agency. Given the size of small OIGs, OIGs have to rely on the agency for HR support. By slowing down the hiring process, OIGs are hindered in their ability to effectively bring talent onboard to pursue audits, investigations or inspections of susceptible areas. In my experience, HR support clearly impairs OIG independence and has a serious effect on the effectiveness of the office. During my time at Ex-Im Bank, we have experienced delays of six to ninth months before hiring OIG staff. This is more significant during times when OIG and senior management have competing hiring strategies.

- Office Space. In my experience, access to adequate space, as required by the IG Act, has proven to be one of the most limiting and hindering factors in our ability to build capabilities needed to provide adequate oversight of Ex-Im Bank. Office space is limited in our current building which has limited our growth. Further, funds appropriated are not enough to hire subject matter experts while covering rent for adequate space. For the first time since our office started, the President's budget for fiscal year 2015 contains funds to address our space limitation. Adequate space is crucial to recruit qualified staff, build up moral, to improve productivity and to develop synergies within the team. When managing space limitation issues, support from the head of the agency is crucial.
- Access to Information. As a new OIG, one of our challenges was to understand how the Ex-Im Bank maintained the information that we needed to conduct our audits, inspections, and investigations, and negotiate timely access to that information. Although the IG Act clearly provides that the Inspector General has access to all books and records of the agency, agencies that have not previously had an Inspector General may not have a culture of sharing information. It is essential that agency leadership emphasize that agency employees must cooperate with information requests from the OIG. Although many of the issues regarding access to information within the Ex-Im Bank have been resolved, we still encounter issues in receiving information from outside parties involved in Bank transactions, and have recommended that the Bank's contracts and agreements specify the rights of the OIG to access information from outside parties related to Bank transactions.

IV. Possible Solutions

This Subcommittee is meeting today to discuss possible solutions to some of the challenges previously described. Although it is difficult to find a "one-size-fits-all" solution to all of these challenges, this Subcommittee should consider several possible alternatives or a combination thereof. Specifically,

- Create one OIG to provide oversight services to agencies with similar missions.
- Develop shared services agreement between OIGs.

- Centralize administrative support services for different small agencies OIGs through larger OIGs, the Office of Personnel Management, or the Council of the Inspectors General on Integrity and Efficiency.
- Place smaller agencies without OIGs under the purview of larger OIGs.

V. Conclusion

All of the OIGs in the federal government face similar challenges when fulfilling their oversight mandate. At small agencies OIGs these challenges are particularly burdensome and more pronounced. Rest assured that my fellow IGs are honored to represent American taxpayers and take pride on the work they do every day. Nonetheless, additional support in addressing challenges would only enhance their ability to provide more effective oversight.

Madam Chair, Ranking Member Johnson, and members of this honorable Subcommittee, thank you once again for the opportunity to testify before you today. I would be pleased to respond to any questions you may have.

Statement of Hubert Sparks, Inspector General, Appalachian Regional Commission

Having been in the OIG community for over 43 years I want to initially express my appreciation to Congress for its long term support of the OIG concept and OIG community. Today's hearing is another example of Congressional interest in assuring protection of taxpayer interests by addressing the issue of independent oversight of entities receiving federal funds.

My opinions, comments and recommendations are primarily based on being IG at a small agency and a small OIG for 14 years.

I believe that independent oversight of federal spending and program operations is a sound policy. Although OIGs generate very impressive statistics, including large potential monetary benefits one, if not the primary, benefit of an OIG presence is the preventive and deterrent value of such offices.

Primary issues include identification of additional entities that should be subject to independent oversight and the most cost effective structure to accomplish this objective. In my opinion there is no one size fits all solution with respect to how oversight of small agencies can be provided in the most efficient and comprehensive manner and various options are available and should be considered.

Most designated federal entity IGs have existed for about 25 years and have dealt with the oversight and administrative challenges such as limited staff, mandated reviews that can consume considerable scarce resources, and need to obtain legal and investigative assistance from other OIGs. The appointment process whereby the Agency Head appoints the IG has, in my opinion, worked well, which I attribute primarily to Congressional action that provided DFE OIGs with the same authorities as Presidentially appointed IGs. As the Committee is aware the issue of the appearance of independence when direct beneficiaries of federal funds have control over the appointment and termination of the IG has surfaced. On a practical basis this issue has not been a problem to date at my agency.

The IG Act of 2008 combining the Presidents Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) into the Council

of Inspectors General for Integrity and Efficiency (CIGIE) and adding additional DFE IGs to CIGIE Committees results in small OIGs participating on an equal basis in CIGIE matters. Essentially there is a one IG, one vote rule that is beneficial to smaller OIGs with respect to CIGIE matters.

With respect to the overall issue of independent oversight of smaller entities the primary options include:

- Small entities contracting with OIGs for services
- A permanent OIG presence
- Legislated OIG oversight provided by another OIG
- Establishing an OIG with responsibilities for oversight of several small entities

As a general statement I do not believe full time OIG presence at very small agencies is cost effective or necessary. Intermittent/part time presence by another OIG or one OIG responsible for several small entities can be effective and cost beneficial with the degree of service or need based on assessment of risk based on entity size, budget, programs and mandated audit requirements.

Small entities contracting with OIGs for services

I am not aware of many instances where entities without independent oversight have contracted with OIGs for services nor involvement of CIGIE in assuring that such entities have adequate oversight. Some smaller entities probably use independent public accounting firms to conduct mandated reviews such as financial statement audit. Agency initiatives to contract with OIGs for services should require that any contracts include provisions that all the authorities of the IG Act apply to the services to be provided.

A permanent OIG presence

Depending on the entities being considered for an OIG presence there may be some that the program size or sensitivity would encourage a permanent OIG . AS noted for most additional smaller entities I do not believe a permanent OIG is needed.

Legislated oversight provided by another OIG

Such an action, which has been recommended in prior legislative proposals and included in some legislation, appears to be one of the more viable options. A key issue is to which OIG should the entity be assigned, including whether the assigned OIG should be a smaller established OIG or a large OIG.

A large OIG has considerable resources but also has high risk programs that rightly receive the most attention. Also, depending on the extent of required audits mandated for the smaller entities, considerable resources of the assigned OIG may be necessary and this could conflict with needed attention to higher priority programs. Thus, the extent of oversight services provided to smaller entities may be limited unless an estimate of the extent of service to be provided is identified. I am aware of at least two instances where legislation assigned a large oversight entity to be the OIG for a smaller entity and this did not work out and such service is no longer provided.

A smaller DFE OIG, although deficient in current resources, has considerable experience in dealing with challenges involved in oversighting a smaller entity and could place a higher priority on assuring that the assigned entity receives a sufficient degree of oversight necessary to determine funds are being properly used and programs are efficiently and efficiently meeting objectives.

Regardless of identified OIGs the issue of OIG resources needs attention if it is expected that the assisting OIG will be willing or able to provide the oversight considered necessary.

Using an OIG to oversight several small entities—Consolidation of OIG services

Such an option would better assure that the small entities received adequate oversight based on OIG risk based assessments as to the extent of oversight needed for each of the entities for which it is the OIG. Such an OIG presence would enhance programmatic expertise, priority setting, and availability of OIG resources to address immediate identified needs rather than decisions being left to another OIG office. Such an arrangement should result in cost efficiencies attributable to efficient use of available resources in relation to need.

Issues with respect to agencies with somewhat similar missions/programs , agency head, location, etc., should be resolvable.

As an example, I and a former ARC IG have recommended a consolidated OIG to oversight the seven small economic Commissions or Authorities. Legislation provides for OIG oversight at these entities. To date three of these Commissions have received very little or no appropriations . These entities are unique Federal/State partnerships whose mission to improve economic development in assigned geographical areas is similar. Use of one OIG would allow the OIG to have a small, but sufficient, staff to implement the full authorities of the IG Act rather than having to rely on other OIGs to provide services such as legal and investigative services and provide expertise with respect to these unique entities .As an aside, the Appalachian Regional Commission is the only entity currently having an OIG presence.

Overall, a consolidated OIG approach where practical would, in my opinion, provide a more effective and cost beneficial approach than an individual OIG or service by another OIG and would provide more directed and timely oversight based on knowledge of applicable entities and staff availability.

I did not include CIGIE as an option for providing oversight to small entities as I do not believe this is practical and would raise many issues as to how this could be implemented . However, in line with my opinion that structuring independent oversight for additional entities should be based on assessments of the agency risks it is possible that CIGIE, with assistance from IGs, could provide some additional input with respect to the extent of needed oversight and how entities without OIG oversight now receive oversight, if any.

Thus, except for entities where a permanent on-site OIG presence is determined to be needed assigning another IG to provide oversight or establishment of an OIG to oversight several entities are recommended.

Finally, a few additional comments are added in line with the Committees interest in impairments that could impact OIG independence and the separate issue of Presidential appointments for smaller IGs.

I appreciate and support Dodd-Frank legislation that significantly protected termination of DFE IGs by requiring a two thirds vote of the Agency Head that is composed of all the Commissioners/Board Members of the entity. The exception with respect to Agency Heads who are not federal appointees and who are directly or indirectly beneficiaries of federal funds, including grants, has been much debated. Although I agree with the potential for this to be an independence issue I have not heard where this in fact has occurred. I also disagree with arguments that Dodd-Frank implementation relegated the IG to internal auditor status and resulted in the IG auditing their supervisors. The IG Act provides enormous authorities such as access to records, initiation of reviews without needed approval, public issuance of reports and subpoena authority. These are not authorities generally provided internal auditors. All IGs are basically overseeing their supervisors be it the IG at the largest Department or smallest entity and the IG Act and GAO standards clearly reflect that placement within an entity does not compromise OIG independence. Agency Head interference with OIG authorized actions can be addressed, including notification to Congress about the problem.

Although a Presidential appointment carries substantial prestige I have not seen any negative impacts with respect to Agency Head dealings with IGs that would be resolved simply by such an appointment. Non Presidential appointees have the same recourse, in my opinion, if needed. A personally biased view is a requirement for a Presidential appointment could reduce opportunities for well qualified and experienced OIG staff to advance to a position of IG at a smaller OIG and the process of replacing an IG could be lengthened considerably.

Thank you for the opportunity to provide comments on an important issue dealing with federal accountability and performance.

TESTIMONY OF
MICHAEL CARROLL,
ACTING INSPECTOR GENERAL,
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

BEFORE THE
SUBCOMMITTEE ON FINANCIAL AND CONTRACTING OVERSIGHT OF
THE SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

“OVERSIGHT OF SMALL AGENCIES”

APRIL 10, 2014

Chairman McCaskill, Ranking Member Johnson, and members of the Committee, I am pleased to appear before you to testify on behalf of the Office of Inspector General (OIG) for the U.S. Agency for International Development (USAID). Today, I would like to discuss the challenges and opportunities of providing oversight of small agencies and the approaches we use to ensure accountability.

There are a number of possible approaches for providing oversight of smaller federal agencies. Such agencies can be identified as designated federal entities under the Inspector General Act and have inspectors general that are appointed by the head of that entity. Alternatively, individual agency inspectors

general may be appointed by the President and subject to confirmation by the Senate. In either case, corresponding OIGs may perform the full suite of oversight activities themselves or work with other oversight bodies to perform this work. Another option is to provide a larger OIG with oversight authority over several related agencies. Finally, in some circumstances, agencies may enter into agreements with OIGs for oversight services. These last two arrangements are the models that we have operated under at USAID OIG and on which we are in the best position to comment. Accordingly, I will discuss the basis for our current oversight arrangements and the approaches that we have taken to oversight of smaller agencies.

USAID OIG was established in 1980 to combat waste, fraud, and abuse and promote economy, efficiency, and effectiveness in USAID programs and activities. Our oversight mandate has since grown to encompass the full portfolio of programs and activities at USAID, the U.S. African Development Foundation (USADF), Inter-American Foundation (IAF), and Millennium Challenge Corporation (MCC). OIG assumed audit and investigative oversight of USADF and IAF in 1999. We were given oversight responsibilities relating to the MCC when it was established in 2004. OIG also has a limited oversight role in association with the Overseas Private Investment Corporation (OPIC) that dates back to 1981.

Our mission is to provide independent oversight that promotes efficiency and effectiveness and safeguards the integrity of programs and operations under our jurisdiction. As is the case with any OIG, some of our work is mandated by statute or other requirements, while other work is performed on the basis of our priorities and assessments of where needs lie. In identifying and prioritizing discretionary audit and investigative activities we consider stakeholder interests and needs, alignment with strategic goals, program funding, and the risks associated with agency programs, including potential vulnerabilities in internal controls. We apply this approach to oversight to all of the agencies for which we have oversight responsibilities.

We bring significant resources and capabilities to bear on the oversight responsibilities with which we have been entrusted. We have substantial depth of experience and a considerable personnel base with expertise in the full range of core oversight-related fields. In executing our oversight mandate, we are able to rely on the work of a talented corps of dedicated performance auditors, financial auditors, certified public accountants, program and management analysts, information technology auditors, and criminal investigators.

Our consolidated, multiagency approach to oversight has several advantages. We can access a greater depth of in-house expertise in different

technical and functional areas than would be the case if we were a smaller OIG. With more resources than a smaller OIG, we also have greater flexibility to address emerging risks across our oversight portfolio. This has enabled us, for example, to reallocate resources in response to pressing oversight demands arising from emerging contingency operations and humanitarian crises and ensure that high-risk activities and operations receive needed coverage.

Our size also enhances our independence. We have sufficient critical mass to support and maintain discrete management, human capital, and IT resources and systems independent of the agencies we oversee. Our engagement in multiple agency settings also lessens our vulnerability to potential pressure from any one agency seeking inappropriate influence on our work. Our ability to operate independent of improper influence is also reinforced by the appointment process for the USAID Inspector General (IG). Although I can personally attest to the difficulties that delays associated with the Presidential appointment and Senate confirmation process can impose on an individual, this rigorous process helps ensure that, at the end of the day, our IG will be fully vetted and enjoy an important measure of congressional support.

We have certain other institutional advantages in providing oversight of foreign assistance. Principal among these is our extensive international reach and experience. Our footprint extends to nine country and regional offices around the world, giving us on-the-ground visibility into the progress of foreign assistance programs and activities. Unlike other offices serving abroad, we are not subject to personnel ceilings imposed by the Secretary of State and enjoy greater latitude in assigning staff to respond to oversight needs in the nearly 100 countries in which the agencies we oversee operate. We also maintain our own cadre of Foreign Service personnel consisting of career auditors, investigators, and analysts to staff our offices abroad. We have built on our long experience abroad by developing a track record of effectively engaging host country law enforcement personnel, prosecutors, and courts to bring those who commit fraud and other unlawful acts to justice.

The fact that we have responsibility for oversight of multiple agencies also presents advantages. This feature places us in a unique position to provide oversight of cross-cutting initiatives like Power Africa that are implemented by more than one foreign assistance agency. Given the Administration's emphasis on implementing foreign assistance through a whole-of-government approach in recent years, we anticipate having more opportunities for cross-cutting work to examine the effectiveness of multiagency efforts in the future.

Although our consolidated oversight model has many strengths, it also involves some challenges. Principal among these is the need to balance oversight

responsibilities across multiple portfolios of varying sizes. USAID managed about \$24 billion in budgetary resources in fiscal year (FY) 2013. For its part, MCC managed budgetary resources amounting to \$2.7 billion. Meanwhile, USADF and IAF were responsible for significantly less, \$36 and \$35 million, respectively, in FY 2013.

While our oversight requirements are substantially greater for USAID than for other agencies with which we work, we invest proportionally more in oversight of small agencies when they are considered on a dollar-for-dollar basis. We perform core financial statement and Federal Information Security Management Act oversight work for all the agencies we oversee, and work to ensure that each agency receives a degree of oversight commensurate with associated program risks. We plan and execute performance audits and reviews and conduct investigative outreach efforts in line with this assessment. For USADF and IAF, we have performed less of this activity than for MCC, but remain engaged nevertheless. In the case of USADF, we completed a performance audit a few weeks ago on programs in Kenya, while one of our two Special Agents in Charge delivered fraud awareness briefings to staff at IAF last month. Meanwhile, due to the scale of MCC's programs and attendant risks, we established a performance audit unit with specific responsibility for MCC oversight along with a dedicated special agent position to focus on related investigations. By dedicating these resources to MCC oversight, we ensure a high degree of knowledge and understanding of MCC systems and processes and continuing vigilance regarding related risks.

The other oversight model under which we operate provides less assurance to taxpayers that risks are being appropriately addressed. Under this model, agencies enter into agreements with OIGs for oversight services. This is the case with OPIC, with regard to which we have a limited oversight role. We are not formally designated as OPIC's OIG and do not have explicit authority to conduct audits of OPIC programs and activities that we deem appropriate. Rather, our engagement with OPIC is a matter of agreement. In each of the past 2 years, Congress has directed that our offices enter into an agreement for oversight services.

Under this arrangement, OPIC has regarded oversight as negotiable. It has delayed related discussions with the predictable effect of limiting the amount of time available to perform oversight activities and possibly also increasing the costs of those activities. As a result of delays on OPIC's part, we did not reach an agreement on FY 2013 oversight until half way through the fiscal year and have yet to reach agreement for FY 2014 activities. In addition to delaying the execution of agreements, OPIC has sought to limit the scope of those activities,

sometimes ruling out support for oversight activities without understanding the requirements associated with them or consulting with our office.

This arrangement—whereby the subject of oversight dictates the types of oversight it receives and the terms under which that oversight is provided—does not serve taxpayers well. Congress has recognized a need for improvement in the oversight framework surrounding OPIC and several related proposals have been advanced. However, an effective long-term solution for OPIC oversight has yet to emerge.

We are encouraged by the Committee’s interest in this topic and have views on elements to be considered as part of any long-term legislative solution for OPIC oversight. Whatever oversight arrangement is ultimately set for OPIC should provide the chosen oversight entity with the authorities needed to conduct the full range of oversight activities and have access to the information, facilities, and personnel provided under the IG Act. That office would benefit by a transparent budgeting process and by the independent appointment of a principal, subject to removal only under the conditions specified in the IG Act. To ensure that any possible successor oversight body benefits by future measures to strengthen OIGs and to enhance their performance along the lines of those enacted through the IG Reform and Dodd-Frank Acts, we would also recommend its establishment within the context of the IG Act rather than as part of an agency’s organic statute.

While there are opportunities to improve the legal framework around oversight of the other agencies we oversee, our most pressing legislative priorities relate to OPIC. The oversight framework under which OPIC operates should be reformed. Although we have been able to operate effectively with respect to the other organizations we oversee, the statutory basis for engagement with OPIC does not provide reasonable assurance that important risks will be addressed. We look forward to working with Congress to make corresponding improvements to the law and to discussing other possible statutory refinements to enhance oversight.

Thank you for this opportunity to address the Committee. We appreciate your continuing interest and attention to the oversight of small agencies. We look forward to continuing to work with Congress and the Administration to meet related challenges and move forward as a community in improving how we conduct oversight. I would be happy to answer any questions you may have at this time.



United States Government Accountability Office

Testimony

Before the Subcommittee on Financial
and Contracting Oversight, Committee
on Homeland Security and
Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 10:30 a.m. ET
Thursday, April 10, 2014

INSPECTORS GENERAL

**Oversight of Small Federal
Agencies and the Role of
the Inspectors General**

Statement of Beryl H. Davis, Director
Financial Management and Assurance

GAO Highlights

Highlights of GAO-14-503T, a testimony before the Subcommittee on Financial and Contracting Oversight, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The IGs play a key role in federal agency oversight by enhancing government accountability and protecting the government's resources. This includes a strong leadership role in making recommendations to improve the effectiveness and efficiency of government offices and programs at a time when they are needed most.

This testimony focuses on (1) the creation of independent IG offices, (2) IG oversight of small agencies, and (3) IG independence and budgetary resources.

This testimony provides updates of current IG responsibilities; provisions of the IG Act, as amended; and draws on prior GAO reports and testimonies conducted in accordance with GAO's Quality Assurance Framework.

GAO has made numerous observations and provided matters for the Congress to consider in prior reports when addressing IG oversight at small federal agencies and IG independence.

View GAO-14-503T. For more information, contact Beryl Davis, (202) 512-2623, davisbr@gao.gov.

April 10, 2014

INSPECTORS GENERAL

Oversight of Small Federal Agencies and the Role of the Inspectors General

What GAO Found

The Inspector General Act of 1978, as amended (IG Act), originally established inspectors general (IG) appointed by the President and confirmed by the Senate in 12 major departments and agencies of the government to conduct and supervise independent audits and investigations; recommend policies to promote economy, efficiency, and effectiveness; and prevent and detect fraud and abuse in their departments' and agencies' programs and operations. Based in part on GAO's findings that the internal audit offices of small federal agencies lacked independence and provided inadequate coverage of important programs, the Congress passed the IG Act Amendments of 1988 to establish IGs in designated federal entities (DFE), which are generally smaller agencies established in various statutes as commissions, boards, authorities, corporations, endowments, foundations, institutions, agencies, and administrations identified by the act. The DFE IGs are appointed by their respective entity heads with duties and responsibilities similar to those of IGs appointed by the President. The Congress used a budget threshold of \$100 million to help determine which DFEs should have IGs. However, additional DFEs below this threshold were also included for specific reasons.

Significant federal programs and agencies should be subject to oversight by independent IGs; however, small IG offices with limited resources might not have the ability to obtain the technical skills and expertise needed to provide adequate, cost-effective oversight. GAO has previously found that alternative approaches exist to achieve IG oversight that may be appropriate for federal agencies with small budgets and few resources. For example, GAO has recommended on a case-by-case basis that specific small agencies could benefit by obtaining IG oversight from another agency's IG office where the missions of the two agencies are somewhat similar.

Independence is one of the most important elements of an effective IG function. The IG Act, as amended, provides specific protections to IG independence. The IG Reform Act of 2008 further enhanced the IGs' independence by providing specified pay levels, IG legal counsel, a process for handling allegations of IG wrongdoing, and required notification to the Congress before an IG is removed or transferred. The IG Reform Act also requires the IGs' budget requests to be visible in the budget of the U.S. government submitted by the President to the Congress. Additional provisions to enhance the independence of IGs in DFEs with boards or commissions were included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Specifically, these IGs are to report organizationally to the entire board or commission rather than a single chairperson. In addition, the IG Act requires a two-thirds majority of the board or commission to remove the IG.

Chairman McCaskill, Ranking Member Johnson, and Members of the Subcommittee:

I am pleased to be here today to discuss the oversight of federal agencies with relatively small budgets and resources and the role of the inspectors general (IG). IG offices play a key role in federal agency oversight by enhancing government accountability and protecting the government's resources. This includes a strong leadership role in recommending improvements to the effectiveness and efficiency of government offices and programs at a time when they are needed most. The Inspector General Act of 1978, as amended (IG Act), established IG offices at major departments and agencies to conduct and supervise audits and investigations; recommend policies to promote economy, efficiency, and effectiveness; and prevent and detect fraud and abuse in their departments' and agencies' programs and operations.¹

My testimony today focuses on (1) an overview of the creation of independent IG offices, (2) IG oversight of small agencies, and (3) IG independence and budgetary resources. In preparing this testimony, we included updates of current IG responsibilities and provisions of the IG Act and relied on our prior work related to these issues. More detail on our scope and methodology is included in each issued product. The work on which this testimony is based was conducted in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to meet our stated objectives and that we discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product. See the specific reports cited throughout this testimony for information on the standards applied.

¹Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), *codified, as amended*, at 5 U.S.C. App.

Overview of the Creation of IG Offices

The IG Act originally established IGs appointed by the President and confirmed by the Senate in 12 major departments and agencies of the government in 1978.² Since then, additional IGs have been added through a series of amendments to the IG Act. The Inspector General Act Amendments of 1988 established IGs appointed by their respective entity heads in designated federal entities (DFE) identified by the act with duties and responsibilities similar to those of IGs appointed by the President.³ DFEs are generally smaller agencies established in various statutes as commissions, boards, authorities, corporations, endowments, foundations, institutions, agencies, and administrations.⁴

Prior to the 1988 amendments, both GAO and the President's Council on Integrity and Efficiency, which preceded the Council of Inspectors General on Integrity and Efficiency (CIGIE), had found that the internal audit offices of small federal agencies lacked independence and provided inadequate coverage of important programs that could benefit from independent oversight by an IG.⁵ Additional criteria used by the Congress to determine where to establish these new IG offices included a budget threshold of at least \$100 million for the DFEs. Specifically, those

²In 1978, 12 IGs were established by the IG Act at the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation; and at the Community Services Administration (which has since been abolished), Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, Small Business Administration, and Veterans Administration (now the Department of Veterans Affairs).

³Pub. L. No. 100-504, 102 Stat. 2515 (Oct. 18, 1988).

⁴In addition to IGs established by amendments to the IG Act, we reported in 2011 that there were 10 IG offices established by various other statutes similar to the IG Act. They are the IG offices at the Architect of the Capitol, Central Intelligence Agency, Government Accountability Office, Government Printing Office, Library of Congress, Office of the Director of National Intelligence, Special Inspector General for Afghanistan Reconstruction, Special Inspector General for Iraq Reconstruction, Special Inspector General for the Troubled Asset Relief Program, and U.S. Capitol Police. (GAO, *Inspectors General: Reporting on Independence, Effectiveness, and Expertise*, GAO-11-770 (Washington, D.C.: Sept. 21, 2011). The Special Inspector General for Iraq Reconstruction terminated its operations as of September 30, 2013.

⁵CIGIE was established by the Inspector General Reform Act of 2008, Pub. L. 110-409, 122 Stat. 4302 (Oct. 14, 2008), to replace the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, which had been established by executive orders. CIGIE consists mainly of IGs, to address integrity, economy, and effectiveness issues that transcend individual government agencies, and to increase the professionalism and effectiveness of personnel in the IG offices.

agencies with an annual budget of \$100 million or greater were considered for inclusion in the 1988 amendments. However, other agencies below this budget threshold were also included for specific reasons. While the IGs in DFEs generally have the same authorities and responsibilities as those established by the 1978 IG Act, there is a clear distinction—they are appointed and removed by their agency heads rather than by the President and are not subject to Senate confirmation.

The 1988 amendments established a new category of “federal entity,” which is defined to exclude departments and agencies and DFEs with statutory IGs under the IG Act, as well as judicial and legislative branch entities and others as specified. Further, the 1988 amendments require the Office of Management and Budget (OMB), in consultation with GAO, to annually publish a list of (1) DFEs and, for DFEs that are not boards or commissions, their DFE heads and (2) the federal entities, as that term is defined by the IG Act. OMB’s list of DFEs and federal entities is to be published annually in the Federal Register.⁶ The 1988 amendments also require that federal entities, which are defined to exclude entities with a statutory IG under the IG Act, report annually by October 31 to each House of the Congress and to OMB on, among other things, the audit and investigative activities in their respective organizations.

The IGs appointed by the President are generally located in the largest departments and agencies of the government; the DFEs generally have smaller budgets and their IGs have correspondingly smaller budgets and fewer staff members. In our 2011 report of survey results of the IG community,⁷ we found 30 departments and agencies with IGs appointed by the President, 33 DFEs with IGs, and 10 IGs established by various statutes similar to the IG Act that were not included in our survey. The presidentially appointed IGs and the DFE IGs reported to us total budget authority for fiscal year 2010 of about \$2.2 billion with approximately 13,000 authorized full-time equivalent staff (FTE). The presidentially appointed IGs’ budget authority constituted about 84 percent of the total IG budget authority and about 86 percent of the total IGs’ FTEs.

⁶OMB published its most recent list on January 14, 2014. 79 Fed. Reg. 1896.

⁷GAO-11-770.

IG Oversight of Small Agencies

GAO has long supported the creation of independent IG offices in appropriate federal departments, agencies, and entities, and we continue to believe that significant federal programs and entities should be subject to oversight by independent IGs. At the same time, we have reported some concerns about creating and maintaining small IG offices with limited resources, where an IG might not have the ability to obtain the technical skills and expertise needed to provide adequate and cost-effective oversight. In the final analysis, the determination of whether to place IGs in specific agencies is a policy decision to be decided by the Congress.⁸ As a result, we believe there are alternative approaches that the Congress may wish to consider to achieve IG oversight that is appropriate for federal agencies with relatively small budgets and resources. For example, we have recommended, on a case-by-case basis, that specific small agencies could benefit by obtaining IG oversight from another agency's IG office where the missions of the two agencies are somewhat similar. The following provides examples from our previously issued reports on alternatives suggested for IG oversight of small agencies.

- **Export-Import Bank.** In 2001, we were asked to review the need for an IG at the Export-Import Bank, which was defined by OMB as a federal entity under the IG Act, and was not subject to IG oversight.⁹ We found that the Export-Import Bank obtained an annual financial audit from an independent public accountant and received additional audits of administrative operations from its internal audit group. We also found that the Export-Import Bank had the largest budget of all other federal entities on OMB's list at the time, and that it was comparable in size to both departments and agencies with IGs appointed by the President and with DFEs with IGs appointed by the head of the DFE. The alternatives we provided for IG oversight of the Export-Import Bank included (1) establishing a new IG office through an amendment to the IG Act with an IG appointed by either the President or by the Export-Import Bank Chairman of the Board of Directors; (2) designating through legislation an existing IG office to provide oversight, such as the Agency for International Development IG; and (3) implementing a memorandum of understanding, which

⁸GAO, *U.S. Export-Import Bank: Views on Inspector General Oversight*, GAO-01-1038R (Washington, D.C.: Sept. 6, 2001).

⁹GAO-01-1038R.

acts like a contract for outside IG services and would not require an amendment to the IG Act or other legislation. Subsequently, the Congress amended the IG Act in 2002 to establish a statutory IG for the Export-Import Bank, appointed by the President and confirmed by the Senate.¹⁰

- **Chemical Safety and Hazard Investigation Board (CSB).** In 2008, we reported on the responsiveness of CSB to past IG recommendations.¹¹ We concluded that after 10 years of operations, CSB continued to operate in noncompliance with its statutory mandates by not investigating all accidental chemical releases that involved a fatality, serious injury, or substantial property damage. Since fiscal year 2004, CSB had been obtaining IG oversight services from the Environmental Protection Agency (EPA) IG through a temporary statutory mandate included in its annual appropriation.¹² However, because of the significant issues uncovered by our review, we provided for congressional consideration alternative oversight mechanisms that could be achieved either by amending CSB's authorizing statute or by amending the IG Act to permanently give the EPA IG the authority to serve as the oversight body for CSB and to provide appropriations and staff allocations specifically for the audit function of CSB through a direct line in the EPA appropriation. Alternatives such as allowing CSB to contract for its own oversight or create an internal audit and investigative unit were not considered as options because of the potential limitations of contracting in terms of both audit independence and the potentially limited duration of the contracting relationship and due to the limited staffing that could reasonably be allocated to an internal oversight function at an agency

¹⁰Pub. L. No. 107-189, § 22(a)(c)(d), 116 Stat. 707,708 (June 14, 2002).

¹¹GAO, *Chemical Safety Board: Improvements in Management and Oversight Are Needed*, GAO-08-864R (Washington, D.C.: Aug. 22, 2008).

¹²See, e.g., Consolidated Appropriations Act, 2004, Pub. L. 108-199, 118 Stat. 3, 399 (Jan. 23, 2004): Regarding CSB oversight, "Provided, further, That notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the Environmental Protection Agency (EPA) shall, by virtue of such appointment, also hold the position of Inspector General of the Board: *Provided further*, That notwithstanding any other provision of law, the Inspector General of the Board shall utilize personnel of the Office of Inspector General of EPA in performing the duties of the Inspector General of the Board, and shall not appoint any individuals to positions within the Board."

of its size. The EPA IG has reported continuing oversight efforts at CSB in recent semiannual reports to the Congress.¹³

- **National Mediation Board (NMB).** In a recent example, our mandated review of the programs and management practices at NMB concluded in a 2013 report that the board is a small agency, but with a vital role in facilitating labor relations in the nation's railroads and airlines.¹⁴ We found that NMB's strategic plan lacked assurance that its limited resources were effectively targeted toward the highest priorities. In addition, NMB lacked certain internal controls that could help achieve results and minimize operational problems. We also concluded that in addition to the periodic oversight by GAO and the annual audits of NMB's financial statements by independent public accountants, an existing IG office assigned with the responsibility for providing ongoing audits and investigations of NMB and its operations would result in more effective oversight. We provided a matter for congressional consideration, which discussed the authorization of an appropriate federal agency's IG office to provide independent audit and investigative oversight of NMB.

There are a number of examples where IGs in federal departments and agencies with relatively large budgets currently provide oversight of federal entities with relatively small budgets. To illustrate, the Department of State IG has oversight authority for the Broadcasting Board of Governors.¹⁵ In another example, the Agency for International Development IG provides oversight to several small federal entities, specifically the Millennium Challenge Corporation,¹⁶ the U.S. African Development Foundation, the Inter-American Foundation,¹⁷ and the

¹³Environmental Protection Agency Office of Inspector General, *Semiannual Report to Congress April 1, 2013 – September 30, 2013*, EPA-350-R-13-003 (Washington, D.C.: November 2013), and *Semiannual Report to Congress October 1, 2012 – March 31, 2013*, EPA-350-R-13-001 (Washington, D.C.: May 2013).

¹⁴GAO, *National Mediation Board: Strengthening Planning and Controls Could Better Facilitate Rail and Air Labor Relations*, GAO-14-5 (Washington, D.C.: Dec. 3, 2013).

¹⁵Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, § 1314, 112 Stat. 2681-761, 2681-776-77 (Oct. 21, 1998), *classified at* 22 U.S.C. § 6533.

¹⁶Millennium Challenge Corporation Act, Pub. L. No. 108-199, title VI, § 614(f)(1), 118 Stat. 211, 223 (Jan. 23, 2004), *classified at* 22 U.S.C. § 7713(f)(1).

¹⁷Consolidated Appropriations Act, 2000, Pub. L. No. 106-133, div. B, § 1000(a)(7), 113 Stat. 1501, 1536, Appendix G, § 205, 113 Stat. 1501, 1501A-422 (Nov. 29, 1999), *codified at* 5 U.S.C. appx. 8A(f)(a).

Overseas Private Investment Corporation.¹⁸ Finally, the Department of Transportation IG is authorized to provide oversight of the National Transportation Safety Board.¹⁹

IG Independence and Budgetary Resources

Independence is the cornerstone of professional auditing and one of the most important elements of an effective IG function. The IG Act provides specific protections to IG independence that are unprecedented for an audit and investigative function located within the organization being reviewed. These protections are necessary in large part because of the unusual reporting requirements of the IGs, who are subject to the general supervision of their agency heads and are also expected to provide independent reports of their work externally to the Congress.

The IG Act provides the IGs with independence by authorizing them to select and employ their own staffs, make such investigations and reports as they deem necessary, and report the results of their work directly to the Congress. In addition, the IG Act provides the IGs with a right of access to information, and prohibits interference with IG audits or investigations by agency personnel. The act further provides the IGs with the duty to inform the Attorney General of suspected violations of federal criminal law.

With the growing complexity of the federal government, the severity of the problems it faces, and the fiscal constraints under which it operates, it is important that an independent, objective, and reliable IG structure be in place where appropriate in the federal government to ensure adequate audit and investigative coverage. The IG Act provides each IG with the ability to exercise judgment in the use of independence protections specified in the act; therefore, the ultimate success or failure of an IG office is largely determined by the individual IG placed in that office and

¹⁸The Agency for International Development has provided IG oversight to the Overseas Private Investment Corporation pursuant to the interagency agreement that is in effect at the time the oversight services are rendered.

¹⁹National Transportation Safety Board Amendments Act of 2000, Pub. L. No. 106-424, § 12, 114 Stat. 1883, 1887 (Nov. 1, 2000), *codified, as amended, at* 49 U.S.C. §1137.

that person's ability to maintain independence both in fact and appearance.²⁰

The Congress passed the IG Reform Act of 2008 (Reform Act) to further enhance IG independence and accountability.²¹ Among other provisions, the Reform Act requires the rate of basic pay of the IGs appointed by the President to be at a specified level, and for the DFE IGs, at or above that of a majority of other senior-level executives at their entities. The Reform Act also requires an IG to obtain legal advice from his or her own counsel or to obtain counsel from another IG office or from CIGIE. Additionally, the act provides a statutory process for handling allegations of wrongdoing by IGs so that such reviews are not done by the same management officials who are subject to IG oversight. The act also requires both the President and the DFE heads to give written reasons to the Congress for removing or transferring an IG at least 30 days prior to the action.

The Reform Act also increased the visibility of the IGs' budgetary resources through the annual budget process. Specifically, the act requires that IG budget requests include certain information and be separately identified in the President's budget submission to the Congress. In addition, along with the separately identified IG budgets, an IG may include comments with respect to the budget if the amount of the IG budget submitted by the agency or the President would substantially inhibit the IG from performing the duties of the office. These budget provisions are intended to help ensure adequate funding and additional independence of IG budgets by providing the Congress with transparency into the funding of each agency's IG while not interfering with the agency head's or the President's right to formulate and transmit their own budget amounts for the IG.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the IG Act with provisions to enhance the independence of IGs in DFEs with boards or commissions.²² Specifically, the Dodd-Frank Act changed who would be considered the head of

²⁰GAO, *Inspectors General: Opportunities to Enhance Independence and Accountability*, GAO-07-1089T (Washington, D.C.: July 11, 2007).

²¹Pub. L. No. 110-409, 122 Stat. 4302 (Oct. 14, 2008).

²²Pub. L. No. 111-203, §§ 989B-D, 1081, 124 Stat. 1376, 1945-46, 2080 (July 21, 2010).

certain DFEs for purposes of IG appointment, general supervision, and reporting under the IG Act. If the DFE has a board or commission, the IG Act now requires each of these IGs to report organizationally to the entire board or commission as the head of the DFE rather than an individual chairman. In addition, the IG Act requires the written concurrence of a two-thirds majority of the board or commission to remove an IG. Prior to this protection, most DFE IGs reported to, and were subject to removal by, the individual serving as head of the DFE.

In other past legislative reforms, the Congress has taken actions to convert IGs from appointment by the agency heads to appointment by the President with Senate confirmation as a way to enhance IG independence. For example, on the heels of the savings and loan and banking crisis over two decades ago, the role of the Federal Deposit Insurance Corporation's (FDIC) IG became increasingly important in providing oversight. Because of the perceived limitation of the FDIC IG's independence resulting from agency appointment, the Congress converted the IG from agency appointment to appointment by the President with Senate confirmation.²³ In another example, the Congress took action to convert the Tennessee Valley Authority (TVA) IG to appointment by the President with Senate confirmation because of concerns about interference by TVA management.²⁴ In both cases, Congress recognized that the IG's independence would be enhanced by the presidential appointment.

Concluding Observations

IGs play a critical role in federal oversight and we believe that all significant federal programs and entities should be subject to oversight by IGs. We have supported the creation of additional IG offices and the enhancements to their independence by past legislation. However, we continue to have some concerns about creating and maintaining IG offices in relatively small federal agencies where it may not be cost-effective to obtain the skills and expertise needed to provide adequate

²³Resolution Trust Corporation Completion Act, Pub. L. No. 103-204, § 23, 107 Stat. 2369, 2407-08 (Dec. 17, 1993). To increase the independence of the entity's IG, this act converted the FDIC IG from appointment by the head of FDIC to appointment by the President with Senate confirmation.

²⁴Pub. L. No. 106-422, § 1, 114 Stat. 1872 (Nov. 1, 2000). To obtain increased IG independence, this act converted the TVA IG from appointment by the head of TVA to appointment by the President with Senate confirmation.

oversight. We believe there are alternatives to creating additional IG offices that can be both effective and less costly. These alternatives for oversight should be decided on a case-by-case basis depending on the critical nature of the small agencies' missions and the risks identified that require increased oversight. Because the Congress relies on the IGs to provide current information about their respective agencies' programs and activities, the determination of where and how to provide IG oversight in specific agencies is a policy decision addressed best by the Congress.

This concludes my formal statement. Chairman McCaskill, Ranking Member Johnson, and Members of the Subcommittee, I would be pleased to answer any questions that you or the Subcommittee members may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact me at (202) 512-2623 or davisbh@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Jackson Hufnagle (Assistant Director), Lauren S. Fassler, Gregory Marchand, Taya Tasse, and Clarence Whitt.

April 10, 2014



Expected Release

10:00 a.m.

Statement for the Record
The Honorable Jon T. Rymer
Inspector General,
Department of Defense

before the

Senate Homeland Security and
Governmental Affairs Committee, Subcommittee on
Financial and Contracting Oversight

on

"Oversight of Small Agencies"

Chairman McCaskill, Ranking Member Johnson, and members of the Subcommittee on Financial and Contracting Oversight, I am pleased to have the opportunity to present a prepared statement for today's hearing on "Oversight of Small Agencies."

Although my present position is the Inspector General for the Department of Defense, I am submitting this statement in my capacity as Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Audit Committee. I have chaired the CIGIE Audit Committee for six years. I would like to focus my remarks on efforts by the Audit Committee to confirm that IGs for small agencies meet the requisite standards for performing critical audit oversight work.

The mission of the Audit Committee is to provide leadership to and serve as a resource for the Federal Inspector General (IG) audit community. Specifically, the Audit Committee sponsors and coordinates audit-related activities that address multi-agency or Government-wide issues, maintains professional standards for OIG audit activities, and administers the audit peer review program. A principal objective of the Audit Committee is to promote effective oversight of government agencies by providing guidance and standards that ensure the audits conducted by Federal Inspectors General can be relied upon to be fair, objective, accurate, and performed in accordance with professional standards and legal and regulatory requirements.

The Generally Accepted Government Auditing Standards (GAGAS) published by the U.S. Government Accountability Office, commonly known as the "Yellow Book," establishes professional standards and guidance for conducting government audits. GAGAS contains requirements and guidance dealing with ethics, independence, auditors' professional judgment and competence, quality control, performance of the audit, and reporting.

One of the primary controls to ensure an IG Audit office is meeting these standards is the peer review process. According to the Yellow Book, “each audit organization performing audits in accordance with GAGAS must have an external peer review performed by reviewers independent of the audit organization being reviewed at least once every 3 years.” The Inspector General Act of 1978, as amended (Section 4(b)(2)) also requires that audit offices within an Office of Inspector General and within certain other Federal entities be reviewed by another audit entity in the Federal government.

It is the responsibility of the CIGIE Audit Committee to establish a schedule for conducting peer reviews of IG audit organizations. The Audit Committee also publishes the “Guide for Conducting External Peer Reviews of the Audit Organizations of Federal Offices of Inspector General.” This guide was last published in 2009. Last year, the Audit Committee began the process of updating the guide.

For several years, the CIGIE Audit Committee has recognized that IGs for smaller agencies face unique challenges in complying with the peer review process. The IGs of these smaller agencies typically have small staffs. Some of these IGs do not perform GAGAS audits, but instead perform other types of reviews and may hire Independent Public Accountants (IPAs) to audit their agency’s financial statements or programs. When using IPAs, IGs are required to supervise the IPA’s work for compliance with GAGAS.

The fact that some IGs have not conducted GAGAS audits presents challenges when undergoing a peer review in accordance with the Yellow Book. In the past, peer reviews have addressed this challenge by including a scope limitation or by not providing a final opinion. In at least one instance, an IG office requested to be removed from the peer review schedule.

The CIGIE Audit Committee, at its most recent meeting on March 25, 2014, considered how to revise the peer review guide to ensure that smaller IGs follow

established audit standards, policies and procedures. The Committee adopted the position that all IGs should be subject to a peer review. The Audit Committee will include in the updated Peer Review Guide a modified peer review process for IGs that do not conduct GAGAS audits or only conduct IPA oversight. The Committee also agreed that the results of these reviews should be published in the IG's Semiannual Report to Congress. Recommendations of the Audit Committee will be presented for consideration and approval by the full CIGIE.

The Audit Committee believes these changes will conform the peer review process to the realities of the smaller IGs while continuing to provide Congress and the American public, confidence that the oversight conducted by IG audit offices complies with professional standards and applicable legal and regulatory requirements.

STATEMENT OF MARY L. KENDALL
DEPUTY INSPECTOR GENERAL
FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE COMMITTEE
ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
SUBCOMMITTEE ON FINANCIAL AND CONTRACTING OVERSIGHT
“OVERSIGHT OF SMALL AGENCIES”
APRIL 10, 2014

Chairwoman McCaskill and members of the subcommittee, thank you for the opportunity to submit comments for the record.

I applaud the Subcommittee’s effort to consider solutions for small agencies that do not have an Inspector General. I would respectfully suggest, however, that included in that consideration should also be the small Inspectors General that do not have adequate staff to fulfill their mission.

I do not submit my comments to the Subcommittee with any particular solutions or recommendations in mind. I merely wanted to share several experiences of the Office of Inspector General for the Department of the Interior (DOI) in assisting small entities to review issues properly addressed by an Inspector General.

The Inspector General for the Election Assistance Commission (EAC) has recently sought our help for audits and investigations related to suspected fraud in the expenditure of EAC funds in the Virgin Islands. We were requested to conduct this work in part because the OIG for Interior has jurisdiction over the Virgin Islands, but also because we have a well-established relationship with the Inspector General for the EAC who previously spent many years as an auditor in our office. We have investigated other issues for the EAC OIG over the years, all under Economy Act reimbursable agreements. The Inspector General for EAC presently attempts to exercise his oversight responsibilities with no staff.

The Udall Foundation is a statutorily established Federal entity with extremely limited resources. When the Foundation found itself mired in some serious management and potential conflict of interest issues, its Board of Directors reached out to our office to request audit and investigative services. Because it has no oversight body, like an Inspector General, itself, the Foundation sought assistance from our office because the Secretary of the Interior holds a position on the Foundation’s Board, and we were able to extrapolate jurisdiction from this relationship. In undertaking this work, however, we started with no knowledge of the Foundation, and had a steep learning curve to overcome. As a result of extremely adept work by our staff, we were able to parse the management problems, explain them clearly to the Board of Directors, and provide meaningful and actionable recommendations to correct them. Because of the interest this generated with the Senate Appropriations Committee, we now receive funding out of the Foundation’s annual appropriation to provide ongoing oversight services to the Foundation.

Recently, we received a request from the House Appropriations Committee staff to provide oversight for the Office of Navaho and Hopi Indian Relocation (ONHIR), another statutorily established entity that has no oversight body to monitor its performance or funding.

Again, we will be provided funds to conduct this oversight, but as with the Udall Foundation, we undertake this effort with no knowledge about the ONHIR, and attenuated jurisdiction. With the Udall Foundation, we had the full support of the Board of Directors. We do not know how our presence will be received by the ONHIR.

The OIG for DOI is a small organization, less than 300 employees to oversee a department of over 70,000, and perhaps double that when all contractors and grantees are considered. Our oversight of entities like EAC, the Udall Foundation, and ONHIR is important and meaningful. We do receive funding or reimbursement for our efforts, but providing these services does divert audit and investigative resources from our oversight of DOI.

We offer this information to the Subcommittee as it considers the dilemma of providing oversight to entities that do not have Inspectors General, and hope that you will also consider the quandary that small IGs, like that for the EAC, face in fulfilling their mission.

Thank you for the opportunity to provide this statement. I am available for questions should the Chair or members of the Subcommittee have them.



SIGTARP

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM

ADVANCING ECONOMIC STABILITY THROUGH TRANSPARENCY, COORDINATED OVERSIGHT AND ROBUST ENFORCEMENT

FOR OFFICIAL USE ONLY UNTIL RELEASED BY THE
U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
FINANCIAL CONTRACTING AND OVERSIGHT SUBCOMMITTEE

WRITTEN TESTIMONY SUBMITTED BY

THE HONORABLE CHRISTY L. ROMERO

SPECIAL INSPECTOR GENERAL

FOR THE TROUBLED ASSET RELIEF PROGRAM

BEFORE THE
U.S. SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
FINANCIAL CONTRACTING AND OVERSIGHT SUBCOMMITTEE

April 9, 2014

Chairman McCaskill and Ranking Member Johnson, I want to thank you for holding today's hearing on "Oversight of Small Agencies." I am a stalwart believer that every government agency requires vigorous oversight by an independent inspector general (IG). There are enormous benefits to having targeted oversight by an IG, and a significant deterrent effect by the very presence of an IG.

Without question, independent inspectors general serve a critical role in the front-line protection of the American people. They ensure that government agencies and government programs are accountable to the taxpayers who fund them. They promote transparency in the management and operation of the government. They protect the American public by ensuring that government agencies are performing at their best. They prevent fraud, waste and abuse. They find efficiencies to save tax dollars. They enforce the law, with some offices of IGs (OIGs), including our office, the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"), having criminal law enforcement authority to search, seize, and arrest. Even the presence of an inspector general can have a significant deterrent effect to foster accountability and impact agency officials' decision-making, as well as preventing fraud or other crime that could victimize the government.

SIGTARP serves as the watchdog over the Troubled Asset Relief Program ("TARP"), the Federal bailout resulting from the 2008 financial crisis. Congress created SIGTARP because it wanted targeted oversight of TARP. Although SIGTARP today is one of the larger offices of inspector general, that was not always the case. SIGTARP started out in December 2008 with no staff, no office space, no equipment, and a significant mission to protect the interests of those who funded TARP programs – the American taxpayers – by conducting criminal investigations and audits. It is our job to advance economic stability by

promoting the efficiency and effectiveness of TARP management, through transparency, robust enforcement, and coordinated oversight.

I came to SIGTARP specifically because of that mission. With my law enforcement background, I was concerned that some would see the disbursement of hundreds of billions of taxpayer TARP dollars as a criminal opportunity. I had the privilege of joining SIGTARP in its early days in 2009. I interviewed in a room under construction with not much furniture, standing up through much of the interview, and eventually sitting on a plastic chair being used by construction workers. But those limitations did not deter me, or others at SIGTARP, from commencing on our important mission.

In SIGTARP's first few years, we were very much in a ramp-up state, which we have now been able to turn to steady state. As a small start-up we faced a number of challenges, but we overcame all of them, and as a result have provided significant benefit to the American public over the past five plus years. Our accomplishments on their behalf include:

- criminal charges brought against 174 individuals, including 112 senior officers (CEOs, owners, founders, or senior executives) of their organizations;
- criminal convictions of 122 defendants;
- prison sentences for 72 defendants (others are awaiting sentencing);
- civil cases and other actions against 64 individuals (including 50 senior officers) and 52 entities (in some instances an individual will face both criminal and civil charges);
- orders temporarily suspending or permanently banning 75 individuals from working in the banking or financial industry, working as a contractor with the Federal government, or working as a licensed attorney;

- *orders of restitution and forfeiture and civil judgments and other orders entered for \$4.71 billion to victims and the Government*;
- savings of \$553 million in TARP funds that SIGTARP prevented from going to the now-failed Colonial Bank; and
- 128 recommendations to Treasury and Federal banking regulators related to TARP.

Challenges SIGTARP faced as a small start-up IG

SIGTARP faced many challenges in its first two years as a small start-up OIG. We lacked office space and sufficient staff. We faced recruitment challenges because we were unknown and had no proven track record of success. We had an uncertain budget appropriations process in which we were already behind the normal budgetary timeline. We had no equipment for SIGTARP special agents, no forensic technology, and no information technology.

However, even during those first years, despite all of these challenges, we were able to accomplish a great deal because what we had was much bigger—an overwhelming sense of purpose to be the voice of the American people. That sense of purpose led us to achieve meaningful results in audits and investigations and in making recommendations.

In our first few months with skeletal staff, one of SIGTARP's first audits involved a SIGTARP survey sent to every TARP bank asking them how they had used the TARP funds. In February 2009, three months after Congress created SIGTARP, we received responses from 100% of the TARP banks. We reported on the banks' use of TARP funds in an audit, which our limited staff produced on an accelerated timeframe. The importance of this first audit cannot be overstated. It brought unprecedented transparency. The American people wanted, and were entitled, to know how banks used TARP funds. It also led to accountability. Treasury and

SIGTARP can use these responses to determine whether the TARP programs are meeting their goals. In addition, SIGTARP uses these responses in its investigations. For example, Mainstreet Bank Chairman and Chief Financial Officer Darryl Woods was convicted of misleading SIGTARP in his response to the survey reporting on the use of TARP funds. Woods failed to tell the truth that within days of receiving TARP funds, the bank spent more than one-third of the \$1.037 million in TARP taxpayer dollars to buy a luxury waterfront condo for his and other bank executives' enjoyment. An important part of Woods' guilty plea is that he is banned from banking.

A SIGTARP investigation in our first year led to the New York Attorney General's (NYAG) lawsuit against Bank of America and its former Chief Executive Officer (CEO) Kenneth Lewis and former Chief Financial Officer (CFO) Joe Price. SIGTARP conducted that investigation with staff sitting at different buildings where we could find space and other limited resources. SIGTARP's investigation with the NYAG's office revealed that Bank of America duped shareholders by not disclosing massive losses at Merrill Lynch prior to the merger of the two companies and snookered the federal government into investing billions of taxpayer dollars into the company through the TARP bailout by falsely claiming that the bank would back out of the Merrill merger if the government did not make an additional TARP investment. Last month, NYAG settled that lawsuit for \$25 million. Mr. Lewis was ordered to personally pay \$15 million of that total and is banned from serving as an officer and director of any public company for three years. The settlement against Bank of America and Mr. Lewis' three-year ban send a powerful message that accountability of individuals and institutions for their actions during the financial crisis will continue to be pursued.

Another important early success came in the Colonial Bank and Taylor, Bean & Whitaker (TBW) case, where our investigation discovered a massive \$2.9 billion fraud scheme by former TBW chairman Lee Bentley Farkas that contributed to the failure of Colonial Bank, the sixth largest bank failure in U.S. history. Although our resources were limited in this investigation, we put much of our resources towards this investigation. As a result, even as a then-small OIG, SIGTARP prevented \$553 million in TARP funds that Treasury had already approved from being disbursed to the now-failed Colonial Bank before the taxpayer TARP funds went out the door. All of those funds would have been lost when Colonial Bank failed. Additionally, because of SIGTARP's investigation, eight senior officers of Colonial Bank and TBW were sentenced to prison including Mr. Farkas, who was sentenced to Federal prison for 30 years, was barred from contracting with the Federal government and is prohibited from working in the financial or real estate industries.

How SIGTARP overcame challenges of being a small, start-up OIG

SIGTARP has worked hard to overcome the early challenges of being a small start-up OIG and we relied on others to help us overcome those challenges. We hired experienced staff with targeted expertise who could hit the ground running. We made use of special hiring authorities with the support of the Office of Personnel Management such as direct hire and annuitant waivers, which greatly enhanced our ability to staff quickly. SIGTARP also benefitted tremendously from other offices of inspectors general providing detailed employees for mission-centric positions so that immediate work could begin. We doubled-up on office space until we could get space for ourselves. We utilized short term options while simultaneously pursuing longer term solutions for space, which included having staff spread out in different buildings.

We maximized our resources through creative solutions. We initially borrowed equipment for SIGTARP special agents from other OIGs. We used shared service contracts with different Treasury bureaus for technology services. We also contracted with the Administrative Resource Center to provide the necessary support services to process transactions such as the issuing of travel credit cards and purchase cards.

We did not try to reinvent the wheel. Looking to help from other OIGs was critical in our first few months as a small start-up. We utilized the existing systems of an established OIG via a memorandum of understanding to greatly facilitate our stand-up process. We used position descriptions and many of their established policies until we could establish our own policies and procedures. Other OIGs also provided us initially with human resources services to assist in establishing and posting the different position recruitments, Legislative Affairs assistance for relations with the Hill, Communications assistance to handle inquiries from the press and public, and General Counsel assistance to review procured contracts in the course of standing up the organization. We even met our requirement to report to Congress by using the template quarterly report of another special IG.

Just as critical to our ability to perform was Congressional and Office of Management and Budget (OMB) support to amend the appropriations process to provide for our budget. We first established access to immediate funding while our organization accounting system was being set up. Ultimately, we were able to obtain support for annual appropriations.

With limited staff and a sense of urgency, we were able to think outside of the box on traditional IG practices. Rather than issuing lengthy audits that would have taken significant staff and time and might not have addressed issues timely enough for quickly-evolving TARP programs, we issued recommendations where we saw an area that needed immediate attention to

prevent fraud, waste, and abuse or to promote the effectiveness of efficiencies of TARP. We looked for ways to make the process work for us, not against us.

We partnered heavily with other law enforcement agencies including federal, state, and local organizations to leverage resources—workspace for SIGTARP agents, space to house evidence that we seized in search warrants such as bank records, use of their computer systems to store and search evidence, and local support to aid SIGTARP special agents in executing arrests and searches. With respect to our case management system to house records relating to our investigations, we utilized proprietary software provided at no cost from another IG initially. We continue utilizing the same system today, but have customized the software to meet our ongoing requirements. We worked hard to establish early relationships with the Department of Justice, both at Main Justice and with United States Attorney's Offices across the country, to partner on investigations and support criminal and civil prosecution. We would not have been able to accomplish what we have without these critical partnerships.

Finally, we worked to coordinate our efforts with other agencies, including other IG offices that had related responsibilities so that there was not a duplication of efforts. We worked with other oversight organizations such as the Financial Stability Oversight Board and Congressional Oversight Panel and the Government Accountability Office to ensure responsible coordinated oversight of TARP issues.

Partnership among OIGs is critical. Without question, the support of our OIG partners paved our way going forward. We benefitted from their expertise and policies as we were first starting up. As we were able to gain additional resources, we were able to assist other new and smaller OIGs. Our partnerships with law enforcement partners and other OIGs have made us the

effective OIG we are today. The more any small OIG can utilize these great resources, the more effective they can be with less.

Conclusion

While small OIGs do face very real challenges, the important benefits they bring to the American people significantly outweigh these challenges. When a federal agency knows that its actions will be subject to direct scrutiny and vigorous oversight, they often conduct themselves differently, and third parties that deal with that agency also often conduct themselves differently. I can say with certainty that is the case related to TARP as I have personally heard these sentiments from Federal officials at Treasury and the Federal banking regulators, and at companies that received TARP funds.

SIGTARP was able to accomplish a lot in its early years as a small OIG, and our work and staff have only improved with experience and time. The work of an OIG is continual. New issues present themselves and over time the quality and quantity of the work of an OIG improves and progresses. For instance, we now have a stellar computer forensic group that has the capability of rooting out crimes that were not possible for us to discover at our initiation. It is an evolving process in which I like to think of our work as a marathon and not a sprint.

One final word – Congressional support is key. Congress helped us with budgeting and hiring issues and brought transparency to the importance of our mission through public hearings, through written requests for our work, and through letters to the Treasury Secretary in support of our recommendations. For example, SIGTARP reported to the House Committee on Oversight and Government Reform the refusal of three former Treasury officials to be interviewed for a SIGTARP audit. Only after SIGTARP reported this to the Committee and the Committee held a hearing on the matter did these former Treasury officials finally agree to be interviewed allowing

us to complete the audit. We would not be the IG office that we were in our first year or the IG office that we are today without bipartisan strong support from Congress. If any meaningful change is to occur at the agency or program being overseen, then Congressional support of IG oversight is necessary and critical.

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the troubled asset relief program, please contact the SIGTARP Hotline.

Via Online: WWW.SIGTARP.GOV
Via Toll Free Phone: 877-SIG-2009
Via Fax: 202-622-4559

Via Mail: Hotline, Office of the SIGTARP
1801 L St., N.W.
Washington, D.C. 20220

Post-Hearing Questions for the Record
Submitted to the Honorable Peggy E. Gustafson
From Senator Claire McCaskill

“Oversight of Small Agencies”
April 10, 2014

In the absence of a regular relationship with an inspector general (IG), some agencies seek out help from existing IGs. However, there is no formal process to do so, and the agencies are left to negotiate with existing IGs for their services.

Q. What kind of assistance, if any, does the Counsel of the Inspectors General on Integrity and Efficiency (CIGIE) currently provide to agencies seeking help from an IG?

Response: In the past, the CIGIE has played an important role in facilitating requests for assistance to ensure effective agency oversight by an Office of Inspector General (OIG). Such requests have included needs for audit, investigative and complaint handling services. Though CIGIE cannot provide these services itself, CIGIE works to match these needs with OIGs that may be able to enter into reimbursable agreements to provide the service. Resource constraints have been a factor that OIGs consider when asked to provide such services. With that being said, we are aware of very few instances where assistance is not provided when requested. CIGIE will continue its facilitation role and its support of requests to promote efficiency and effective oversight.

Q. How do you think CIGIE could be more useful in facilitating the development of ongoing oversight programs between small agencies and larger IG offices?

Response: The Inspector General Reform Act established CIGIE to serve as a unified council of statutory Federal IGs, to carry out two key missions:

- address integrity, economy, and effectiveness issues that transcend individual Government agencies; and
- increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment

of a well-trained and highly skilled workforce in the offices of the Inspectors General.

With respect to CIGIE's first mission, it could be appropriate, to that end, for CIGIE to consider further activities, such as an endeavor to develop standards and approaches to guide oversight programs between small agencies and larger IG offices.

CIGIE's training and professional development mission is addressed through our Training Institute, which offers training to OIG audit, investigative, inspection and evaluation, leadership, and mission support personnel. Though the institute is still in a developmental phase, in FY 2013, the institute delivered 64 specialized training courses to over 1,700 students.

- Q. **Should we consider broadening CIGIE's mission to ensure that all federal dollars receive adequate and effective oversight, and give CIGIE the resources to accomplish this?**

Response: The Inspector General Act of 1978, as amended (IG Act), initially consolidated the audit and investigative functions in 12 Cabinet-level agencies under their respective IGs. The Inspectors General became independent forces for promoting economy, efficiency, and effectiveness, while preventing and detecting fraud, waste, and abuse in their agencies' programs. The IG Act established a dual reporting responsibility, whereby Inspectors General report both to the head of their respective agencies and to Congress. This relationship with Congress provides the legislative safety net that helps protect the independence and objectivity of Inspectors General independence and objectivity.

In context of the IG Act, CIGIE members' (72 Inspectors General) authority is exercised individually within specified jurisdictions of executive branch entities. These jurisdictional boundaries set Inspectors General apart from the Government Accountability Office (GAO), which has broad jurisdiction as part of the legislative branch. Notwithstanding defined jurisdictions, innate, independent oversight by an OIG is perhaps one of the great strengths of the IG Act's framework. Any considerations of an oversight body having broad jurisdiction within the executive branch under authorities of the IG Act also would implicate key provisions, such as general supervision by an Agency Head, access to records, logistical support, etc. The relevance of these provisions in relation to the effectiveness of Inspectors General cannot be overstated, as well as the distinct separation of

powers concerns that the IG Act carefully balances. The oversight strength of individual IGs working within their agencies may outweigh any perceived benefits of a direct oversight role by CIGIE itself.

Some IGs have signed contracts or MOUs with other agencies, such as OPM, for human resource services.

Q. How does this process work?

For specified services, Offices of Inspector General normally enter into reimbursable agreements, whereby one Federal agency (i.e. Office of Inspector General) reimburses another Federal agency (i.e. Office of Personnel Management) for the actual costs of providing such services. Other arrangements could include detail assignments of certain personnel for established periods of time.

Q. Is the process effective, or do you believe there is a better way to obtain these resources?

Response: The MOU process is a common approach employed across government to obtain shared service. Although effective, it can be limited by resource considerations by the entities, because specific appropriations for such agreements rarely exist.

Q. Has there been any discussion at CIGIE about whether it could play a role in either providing or facilitating these services?

Response: As discussed above, CIGIE has played an important role in facilitating requests for assistance to ensure effective agency oversight by an OIG. Such requests have included needs for audit, investigative and complaint handling services. Though CIGIE cannot provide these services itself, CIGIE works to match these needs with OIGs that may be able to enter into reimbursable agreements to provide the service.

Another issue that has come up recently is that some small IG offices do not undergo peer review. Apparently, current rules only require IG offices that produce audits to be peer reviewed, and some small IG offices are not producing any audits.

Q. Does CIGIE have concerns about whether some offices are not being peer reviewed? What is being done to address this?

Response: For several years, the CIGIE Audit Committee has recognized that IGs for some smaller agencies face unique challenges in complying with the peer review process. The IGs of these smaller agencies typically have small staffs. Some of these IGs do not perform Generally Accepted Government Auditing Standards (GAGAS or “Yellow Book”) audits, but instead perform other types of reviews and may hire Independent Public Accountants (IPAs) to audit their agency’s financial statements or programs. When using IPAs, IGs are required to supervise the IPA’s work for compliance with GAGAS.

The fact that a few IGs have not conducted GAGAS audits presents challenges when undergoing a peer review in accordance with the Yellow Book. In the past, peer reviews have addressed this challenge by including a scope limitation or by not providing a final opinion. In at least one instance, an IG office requested to be removed from the peer review schedule.

The CIGIE Audit Committee, at its most recent meeting on March 25, 2014, considered how to revise the peer review guide to ensure that the few IGs with oversight of smaller agencies that have not conducted GAGAS audits, follow established audit standards, policies and procedures. The Committee adopted the position that all IGs should be subject to a peer review. The Audit Committee will include in the updated Peer Review Guide a modified peer review process for IGs that do not conduct GAGAS audits or only conduct IPA oversight. The Committee also agreed that the results of these reviews should be published in the IG’s Semiannual Report to Congress. Recommendations of the Audit Committee will be presented for consideration and approval by the full CIGIE.

Legislation has been proposed that would consolidate some smaller IG offices and ensure that all federal agencies have a statutory IG.

Q. Do you have any suggestions on how the legislation could be improved?

Response: The IG Act provides a strong statutory framework for independent oversight by Inspectors General. CIGIE's membership is comprised of Inspectors General that operate under authorities set forth for establishment entities and designated federal entities. Though some OIGs have unique authorities and provisions that guide their operations, CIGIE strongly believes all statutory IGs are empowered to provide independent oversight.

As noted in my testimony, the agencies and Inspectors General impacted by the legislative proposal each have unique considerations relative to the model of providing oversight by Inspectors General under the authorities of IG Act. CIGIE has encouraged those IGs, who would be directly affected by the proposed legislation, to communicate their views directly to the Subcommittee. CIGIE itself is developing comment on the proposal and is engaging its members to offer these considerations in a separate communication to your office.

Post-Hearing Questions for the Record
Submitted to the Honorable Osvaldo L. Gratacós
From Senator Claire McCaskill

“Oversight of Small Agencies”
April 10, 2014

The Export-Import Inspector General (IG) position was created in 2002, but the office did not get off the ground until 2007.

Q. What were the causes for that delay?

The position of Inspector General was established in legislation as a Presidentially-appointed, Senate-confirmed position. The President did not make a nomination to the position until 2007, and therefore the office could not be established.

Q. What, if anything, could Congress have done in the statute that created your office to make the process smoother?

In creating new Inspector General positions to be filled by Presidential appointment and Senate confirmation, Congress could provide a mechanism for the appointment of an interim Inspector General, recommended by the Council of Inspectors General on Integrity and Efficiency (CIGIE), by the agency head or other official so that the Office of Inspector General can be established prior to completion of the often lengthy nomination and confirmation process.

In your testimony you mentioned some concerns related to the resources needed to start up and effectively manage the office, including IT procurement and office space.

Q. What, if anything, could Congress have done to alleviate these concerns?

Congress could emphasize to the parent agency the importance of providing administrative support to a new Office of Inspector General. The Inspector General Act states that agency heads “shall provide the [Office of Inspector General] within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.” In authorizing or appropriations legislation and committee reports related to new IG

offices, Congress could reiterate the expectation that agencies comply promptly with these provisions.

Some have argued that an IG needs to have some physical presence at the agency in order to ensure effective oversight.

Q. How does the Export-Import Bank's international mission affect the ability for your office to have a physical presence?

It is important for an Office of Inspector General to be co-located with the agency it oversees to facilitate regular contact between the OIG and agency officials and to develop informal relationships through which the OIG stays informed about agency activities. Most of the Export-Import Bank staff are located in the Washington, DC headquarters, as are all of the OIG staff. The Export-Import Bank does not have staff assigned to overseas posts, but agency officials accomplish their international mission through regular travel. Similarly, the Export-Import Bank OIG does not maintain overseas posts, but travel internationally as necessary, sometimes with agency officials.

Currently, Ex-Im Bank as well as OIG staff have outgrown assigned space in the main Ex-Im Bank building. This building is currently under renovation and the proposed OIG space, as designed and designated by Ex-Im Bank management, does not allow for full accommodation of the anticipated growth of the OIG. This would force the OIG to find a location outside the building despite our preference to stay in the main building.

Legislation has been proposed that would consolidate some smaller IG offices and ensure that all federal agencies have a statutory IG.

Q. Do you have any suggestions on how the legislation could be improved?

I support the goals of the legislation to ensure that all federal agencies are covered by an Inspector General with full statutory authority. I also support the provision assigning the Export-Import Bank OIG the responsibility to act as the IG for the Overseas Private Investment Corporation (OPIC). As I noted in my testimony, Ex-Im Bank and OPIC engage in similar types of transactions involving loans and loan guarantees in international trade, so the same specialized knowledge within the OIG could be applied to both agencies. Adding the responsibilities to serve as IG for OPIC would require additional resources. Accordingly, I would request that the legislation

clearly authorize two main things: (1) appropriation of such sums as may be necessary to accomplish this mission, so that the necessary level of resources can be evaluated and provided through the budget and appropriations process; and (2) that full, unequivocal, authority under the IG Act is extended to the IG to have full access to records/information as well as to make absolutely clear that the new agency shall support the IG in all aspects.

As to consolidation of smaller IG offices, many of the challenges that smaller OIGs face occur in the startup phase, but have been successfully mitigated or addressed in long-established offices. Therefore, Congress should carefully consider whether consolidation of established small IGs would unnecessarily disrupt offices that are currently performing their mission, without providing significant benefit.

In legislation to improve oversight and the Inspector General system, Congress should also consider legislative proposals endorsed by CIGIE to improve access to information and information sharing. Congress could consider additional measures to mandate that government contractors and grantees provide information to the IG when requested, and to clarify that other statutes or regulations governing privacy or confidentiality do not supersede the rights of the IG to access all records within their respective agencies.

**Post-Hearing Questions for the Record
Submitted to Hubert Sparks
From Senator Claire McCaskill**

**“Oversight of Small Agencies”
April 10, 2014**

- Q. Do you believe that there is an inherent conflict of interest when an IG is appointed by—and must ultimately answer to—the head of a federal entity, over whom the IG is supposed to be providing oversight?
- A. Not necessarily. All IGs, in my opinion, have an inherent conflict of interest in that they are overseeing and reporting to the Head of the Agency or Department for which they have oversight responsibilities. Former GAO Director David Walker has noted, and I agree, that the IG integrity is the key to independence. Although the Presidentially appointed IGs may, on paper, report to the President as a matter of practice they report and answer to the Agency Head and are subject to the same appearance of lack of independence and potential impropriety as IGs appointed by the Agency Head. In practice, the Presidential IG is probably more susceptible to pressure than a DFE IG many of whom are career employees who cannot simply be terminated based on a recommendation by a Department Head to the President. Also, both IG classes have the same IG Act protections with respect to notification in advance to Congress about terminations and although both IG classes are subject to pressure recent indications are that the IGs that have encountered sufficient pressure to influence their decisions were Presidentially appointed IGs.

Presidential appointments certainly could add status to DFE IGs but the process of selection and confirmation with respect to additional Presidential appointments is a practical problem and I do not believe such an appointment adds much to the independence or avoidance of conflict of interest.

- Q. Even if no actual conflict exists, is the appearance of impropriety enough to merit reconsideration of this reporting structure for DFEs and their IGs?
- A. Since all IGs are part of their parent agency they are all subject to questions about the appearance of impropriety. Congress and GAO have specifically identifies various protections that are intended to assure that all OIGs can operate independently within their parent agency but it still comes down to the integrity of the IG. My ideal IG candidate would probably be someone with the required qualifications who was either eligible for, or had just retired, and thus would be less subject to the normal pressures placed on IGs by the Departments/Agencies they oversight. I realize this is not a practical approach.
- Q. Under what circumstance, if any, might IGs feel pressure that affects their ability to conduct oversight? How can this be mitigated?
- A. Pressure is part of the position and can be felt whenever there is a significant disagreement between the OIG and Department/Agency officials and as long as the OIG is within the

agency it oversees this will continue. I have said many times there is no such thing as true independence when an agency is within the one it oversees but that the current OIG structure is the best practical Executive Branch approach as opposed to say a super OIG not reporting to or through their particular agency. As an aside, the accepted practice that CPA firms select the auditors to perform their peer reviews makes the term independence rather meaningless in such situations and I believe OIGs are much more independent than this type arrangement. While pressure, due to the OIG role, cannot be mitigated to any great degree a clear understanding of Department/Agency and OIG responsibilities and authorities and implementation of such can help reduce pressure.

Legislation has been proposed that would consolidate some smaller IG offices and ensure that all federal agencies have a statutory IG.

- Q. Do you believe having one regional commission inspector general is a good approach? Why or why not?
- A. I, and the former ARC IG who was my successor and predecessor, have recommended the consolidation of the smaller Economic Development Commissions that are structured as joint Federal/State Partnerships into one OIG office. This would facilitate, in my opinion, a cost-effective method to better assure some effective oversight is provided to these entities. I do not believe a separate OIG at the smallest of these entities is necessary based on the entity workload and one IG for these Commissions would better allow the OIG to conduct the full gamut of OIG responsibilities and have the expertise relative to similar type programs. Assignment of the smallest Commissions to another OIG such as was done with the Denali Commission during its infancy is also a viable option but I also believe a separate IG would have a greater interest in providing effective oversight to these entities.
- Q. Under this proposal, would you envision permanently establishing a satellite office in Alaska or do you think periodic visits would be sufficient?
- A. Since the current budgets of the other small Economic Development Commissions are very small I do not believe a full time presence at these entities is necessary. This, in my opinion which can be disputed, is true of the Denali Commission whose budget has gone from over \$ 100 million to about \$15 million in recent years and of the other Commissions with even smaller budgets, including a couple with almost no appropriations too date. Periodic visits should be sufficient and this could be revised if circumstances change. In today's travel world the travel costs of going to Alaska are not significantly different than going short distances and overall cost relative to a full time staff would be reduced. Risk assessments should also identify which of the Commissions receive priority attention.
- Q. Do you have any suggestions on how the legislation could be improved?
- A. A discussion of needed and effective oversight at smaller entities is a valid subject and the consolidation of smaller OIGs has been discussed in the past. As testified and discussed with Subcommittee staff I agree with the concept of oversight of all federal expenditures. With respect to the oversight of entities without current oversight I

recommend that responsibilities for this oversight be assigned to smaller DFE OIGs. This would, based on my experience, better assure that these entities receive attention as they would become a priority within the smaller OIGs and could alleviate some of the Congressional concerns about smaller DFE OIGs such as availability of resources to conduct the full gamut of OIG responsibilities. Program expertise would not be compromised as the larger OIGs currently designated to oversight these entities also have no prior experience with these entities so the learning curve is the same.

With respect to consolidation of current smaller OIGs with larger OIGs the overall topic of consolidation should be further discussed and assessed in the context of the value these entities within their parent agencies rather than determinations based on size for example. I have made my position clear that I do not agree with the consolidation of current smaller OIGs with other OIGs for various reasons and will not bore you with repetition of the details. Overall, I believe the value of an on-site presence outweighs other factors with respect to the consolidating of these OIGs with other IGs and should be the primary factor in the decision process.

This does not mean that smaller OIG performance, cannot be improved to address Congressional concerns with respect to programmatic reviews for example. This could be facilitated by Congressional action with respect to annual mandated reviews that are regularly required by all OIGs even if the risk to the particular program at small agencies is very limited. This would free up smaller OIG time to address higher priority and higher risk issues.

I do want to add a new comment with respect to a couple of points relative to the questions referred to CIGIE. The letter to CIGIE indicated that some OIGs do not have Audit Peer Reviews and do not conduct audits. All OIGs are subject to and receive Audit Peer Reviews, although a modified approach is being considered for some smaller OIGs that use inspections and evaluations to conduct more efficient and effective oversight of their agencies. Also, as far as I know, all OIGs contract for audits that are conducted in accordance with GAGAS and I have never seen an OIG Semiannual Report that does not claim these audits as OIG audit products. The Audit Peer Review that all OIGs receive also includes a fairly detailed assessment of the degree of monitoring the OIG provides for contracted audits. I have not been able to find out which OIGs provided incorrect information to the Committee as well as which OIGs provided what I consider incorrect information that OIG size should be a primary criteria in decisions about OIG status or that two auditors are needed for every audit.

With respect to Inspections and Evaluations a peer review guide is now being piloted and will be finalized shortly.

On the issue of shared services there may be an occasional case where shared services are not immediately available, be it legal, investigative, HR or contracting, these cases are few due to the limited needs of smaller OIGs. In reality the same situation occasionally occurs in large OIGs that have staff devoted to these services. Shared services are often the most efficient way to accomplish low volume needs.

A last comment on this issue is clarifying a comment I made at the hearing that could be misconstrued. With respect to consolidations of smaller OIGs my intention was to note that while I disagreed with the proposed OIG consolidations if it was determined to proceed with legislation for such consolidations I would urge that such consolidations involve combining smaller OIGs rather than placing them with large OIGs. This would better assure the impacted agencies would receive priority attention, program expertise would be readily available, the value of continued on-site presence, while now indirect, would be essentially maintained and the OIG would be in a better position to be staffed to directly implement all OIG responsibilities

Another approach to oversight of small agencies would be to create umbrella DFE Agency OIG. Such an office could coexist with existing DFE IG offices but reduce duplication by consolidating administrative and other non-IG functions?

Q. What are your thoughts about this alternative approach?

A. One of the first issues raised when I was asked by CIGIE to establish a smaller OIG group in 2011 to address the challenges of smaller OIGs was how best to address the adjunct OIG responsibilities with respect to contracting, human resources, procurement etc., and the discussion included use of CIGIE to provide such services. The stumbling block was the difficulty in identifying the extent to which these services would be needed in order to give CIGIE a dollar figure they would have confidence in if services were to be provided and CIGIE staffing needed to be increased.. The same issue would arise with respect to an umbrella DFE – OIG to provide such services. In reality, based on smaller OIG staffing, the need for such services is generally very limited and utilization of other OIGs and/or agency staff has been very successful. I would probably favor such services be provided through CIGIE provided CIGIE could provide such services on as needed concept rather than smaller OIGs having to allocate funds for services that might not be needed in a particular year, I recognize this is a concept CIGIE would understandably not accept.

Also, I have heard of very few instances where shared services, be it from other OIGs or Agency staff for non-sensitive issues, has been a problem for smaller OIGs and am not certain that there is a significant need for much change in current arrangements.

I appreciate the efforts to comment on these issues and the consideration the Subcommittee is giving to the subject and particularly the comments of those who would be impacted by the discussion draft potential legislation.

Post-Hearing Questions for the Record
Submitted to Beryl Davis
From Senator Claire McCaskill

"Oversight of Small Agencies"
April 10, 2014

Legislation currently being drafted by the Subcommittee would require the Government Accountability Office (GAO) to conduct a risk analysis and make recommendations to Congress about how frequently statutorily required audits, such as audits under the Federal Information Security Management Act (FISMA) and the Improper Payments Act (IPERA), should be conducted.

**Does GAO think that this is a workable request?
Would GAO propose an alternative approach?**

GAO response: The Federal Information Security Management Act of 2002 (FISMA) requires, among other things, that each agency both report annually on its information security programs and obtain an annual independent evaluation to determine the effectiveness of its information security program and practices.¹ The evaluations are required to be performed by the agency's inspector general (IG) or an independent external auditor. In addition, FISMA requires the Comptroller General to periodically evaluate and report to Congress on the adequacy and effectiveness of the agencies' information security policies and practices, and implementation of provisions of the act.

GAO has recognized the nation's increasing dependency on computerized information systems and electronic data. The security of these systems and data is essential to protecting national and economic security, public health, and safety. Federal information security has been on GAO's list of high-risk areas since 1997. In 2003, GAO expanded this high-risk area to include cyber critical infrastructure protection. This includes risks to information and communication systems from insider threats by disaffected or careless employees and business partners, escalating and emerging threats from around the globe, the ease of obtaining and using hacking tools, the steady advance in the sophistication of attack technology, and the emergence of new and more destructive attacks.²

Threats to systems supporting critical infrastructure and government information systems are evolving and growing. The number of information security incidents reported by federal agencies to the U.S. Computer Emergency Readiness Team more than doubled in recent years from 29,999 in fiscal year 2009, to 61,214 in fiscal year 2013. In addition, reports of cyber

¹FISMA was enacted as Title III of the E-Government Act of 2002, (Pub. L. No. 107-347, 116 Stat. 2899, Dec. 17, 2002).

²GAO, *High-Risk Series, An Update*, GAO-13-283 (Washington, D.C.: February 2013).

incidents affecting national security, intellectual property, and individuals have been widespread, with reported incidents involving data loss or theft, economic loss, computer intrusions, and privacy breaches. To illustrate, for fiscal year 2013, 18 of 24 major federal agencies reported that information security control deficiencies were either a material weakness or significant deficiency in internal controls over financial reporting. Further, for fiscal year 2013, the IGs at 21 of 24 agencies cited information security as a major management challenge for their agencies.³

Because of the number and significance of threats to information security throughout the federal government, we believe the current annual FISMA requirements should remain in place. As recommended in our recent update of high-risk areas, executive branch agencies need to continue to expand their oversight of information security programs and practices, and to (1) develop and implement remedial action plans for resolving known security deficiencies of government systems, (2) fully develop and effectively implement agency-wide information security programs as required by FISMA, and (3) demonstrate measurable progress in addressing deficiencies.

We are concerned that an additional GAO assessment of risks and vulnerabilities to federal agencies' information systems to determine the frequency of audit requirements would result in a duplication of requirements already in effect. Nevertheless, an alternative approach could involve GAO summarizing the results of the FISMA reviews reported by a sample of small federal agencies to help determine the benefits of providing this information on an annual basis.

The Improper Payments Elimination and Recovery Act of 2010 (IPERA)⁴ amended the Improper Payments Information Act of 2002 (IPIA)⁵ and enacted some new provisions. As amended, IPIA requires executive branch agencies to review all of their programs and activities to identify those susceptible to significant improper payments.⁶ For programs that are considered susceptible to significant improper payments,⁷ agencies must perform an annual statistically valid estimate of the program's improper payments, publish the results of that estimate, and implement a plan to reduce improper payments in the program or activity. IPERA requires agencies to conduct recovery audits, where cost effective, for each program and activity with at least \$1 million in annual program outlays. In addition, IPERA calls for federal agencies' IGs to annually determine whether their respective agencies are in compliance with key IPERA requirements and to report

³GAO, *Information Security: Federal Agencies Need to Enhance Responses to Data Breaches*, GAO-14-487T (Washington, D.C.: Apr. 2, 2014).

⁴Pub. L. No. 111-204, 124 Stat. 2224 (July 22, 2010).

⁵Pub. L. No. 107-300, 116 Stat. 2350 (Nov. 26, 2002).

⁶Under IPIA, as amended, improper payments are statutorily defined as any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. According to guidance from the Office of Management and Budget, agencies should also report as improper payments any payments for which insufficient or no documentation is found.

⁷For fiscal year 2014 and thereafter, a program's improper payments are considered "significant" if they may have exceeded either \$10 million and 1.5 percent of program outlays, or \$100 million.

on their determinations. Federal agencies reported improper payment estimates totaling \$105.8 billion⁸ in fiscal year 2013.⁹

The federal government continues to face challenges in determining the full extent of improper payments. IGs have reported deficiencies related to compliance with the criteria listed in IPERA for fiscal year 2012 at their respective federal entities, including risk-susceptible programs that did not report improper payment estimates, estimation methodologies that were not statistically valid, and risk assessments that may not accurately assess the risk of improper payments. However, a number of actions are under way across the federal government to help advance improper payment reduction goals. Completing these initiatives, as well as designing and implementing enhanced strategies to include identifying and analyzing the root causes of improper payments is key to developing effective corrective actions and implementing the controls needed to reduce and prevent improper payments. Effective monitoring and reporting will be important to help detect any emerging improper payment issues.

We believe the annual IPERA requirements are important to help identify and reduce improper payments throughout the federal government. With regard to small agencies in particular, IPERA already includes provisions that reduce its administrative burden where appropriate. If a program's risk assessment determines that the program is not susceptible to significant improper payments, no further estimation is required, and that risk assessment does not have to be performed again for 3 years, absent any major changes in the program. Further, recovery auditing efforts under IPERA are only required where the responsible agency determines that they would be cost-effective. In addition, the annual requirement for the IGs to determine and report on their agencies' compliance with IPERA's provisions is a necessary oversight mechanism to help ensure that the agencies' actions are effective. Therefore, we do not believe that an additional risk assessment by GAO to determine the frequency of audit requirements under IPERA is warranted.

One of the issues that the Subcommittee is considering is whether all inspectors general should be presidentially-appointed and Senate-confirmed (PAS). I understand that GAO conducted a survey in 2011 that looked at issues of independence and found that opinions were mixed.

Does GAO believe there are enough safeguards in place to ensure that non-PAS IGs are independent?

⁸The estimated \$105.8 billion in improper payments excludes the Department of Defense's (DOD) Defense Finance and Accounting Service (DFAS) Commercial Pay program. In May 2013, we reported on major deficiencies in DOD's process for estimating fiscal year 2012 improper payments in the DFAS Commercial Pay program. According to its fiscal year 2013 agency financial report, DOD is reevaluating its sampling methodology for fiscal year 2014 for the DFAS Commercial Pay program based on our recommendation. Consequently, the fiscal year 2013 improper payment estimate for the DFAS Commercial Pay program may not be reliable. See GAO, *DOD Financial Management: Significant Improvements Needed in Efforts to Address Improper Payment Requirements*, GAO-13-227 (Washington, D.C.: May 13, 2013).

⁹GAO, *Financial Audit: U.S. Government's 2013 and 2012 Consolidated Financial Statements*, GAO-14-319R (Washington, D.C.: Feb. 27, 2014).

GAO response: The Inspector General Act of 1978, as amended (IG Act) created offices of inspectors general at major departments and agencies with IGs who are appointed by the President, confirmed by the Senate, and may be removed only by the President with notice to Congress stating the reasons.¹⁰ The IGs are to prevent and detect fraud and abuse in their agencies' programs and operations; conduct audits and investigations; and recommend policies to promote economy, efficiency, and effectiveness. In 1988, the IG Act was amended to establish additional IG offices in designated federal entities (DFE) defined by the act. Generally, the DFE IGs have the same authorities and responsibilities as the presidentially appointed IGs but there is a clear distinction—they are appointed by, and may be removed by their agency heads and they are not subject to Senate confirmation.

Our fiscal year 2011 survey of the IGs did not specifically address the matter of IG independence related to appointment by an agency head versus appointment by the President.¹¹ However, in fiscal year 2002 we did report the results of our survey of the IG community on the effect that conversion of IGs appointed by their agency heads to appointment by the President with Senate confirmation would have on IG independence.¹² Our survey also asked how the independence of DFE IG offices would be affected by consolidating their offices with larger, presidentially appointed IG offices. While the results of our prior report may not necessarily reflect the opinions of the current IGs, the responses by the presidentially appointed IGs at that time generally indicated that conversion to presidential appointment and Senate confirmation would strengthen DFE IG independence. The DFE IGs, in general, indicated that there would be no effect on their independence.

Regarding the possible impact of consolidating DFE IG offices with presidentially appointed IG offices, the presidentially appointed IGs who responded to our 2002 survey indicated that both the DFE IGs' actual independence and appearance of independence would be strengthened. The DFE IGs generally indicated that there would be no impact. The presidentially appointed IGs also indicated that several elements affecting the DFE IGs' quality of work would be strengthened through consolidation, including the ability to issue hard-hitting reports when necessary, to audit issues of high risk, to review issues across agencies, to get attention to recommendations made by the IGs, and to plan work. In addition, the presidentially appointed IGs indicated that consolidation could strengthen the DFE IGs' (1) use of resources by increasing control over spending and budget requests, (2) availability of investigative resources, (3) ability to minimize duplication of audit efforts, and (4) ability to share methods and technology specialists and to use human capital skills efficiently. At the same time, the DFE IGs generally indicated that there would be either no effect or that these elements would be weakened through consolidation.

¹⁰Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978) *codified, as amended*, at 5 U.S.C. App.

¹¹GAO, *Inspectors General: Reporting on Independence, Effectiveness, and Expertise*, GAO-11-770 (Washington, D.C.: Sept. 21, 2011).

¹²GAO, *Inspectors General: Office Consolidation and Related Issues*, GAO-02-575 (Washington, D.C.: Aug. 15, 2002).

We believe that the appointment and removal processes of the presidentially appointed IGs versus those IGs appointed by their agency heads result in a clear difference in the level of independence of the IGs. Generally, the further removed the appointment source is from the audited entity, the greater the level of independence. However, safeguards to IG independence are included in provisions of the IG Act that apply to all IGs. These protections are necessary in large part because of the unusual reporting requirements of the IGs, who are both subject to the general supervision by the heads of the agencies they audit and expected to provide independent reports of their work externally to Congress. In addition, *Government Auditing Standards* recognizes that safeguards exist for the independence of DFE IGs.¹³ These safeguards are specified by provisions in the IG Act and include (1) establishment of the IGs by statute, (2) communication to Congress of the reasons for an IG's removal, (3) statutory protections that prevent the audited entity from interfering with an audit, (4) statutory requirements for the audit organization to report to a legislative body on a recurring basis, and (5) statutory access to records and documents related to agency programs.

¹³GAO, *Government Auditing Standards, 2011 Revision*, GAO-12-331G (Washington, D.C.: December 2011).

